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CONSIDERATION OF REPORTS BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Fourth periodic reports of States parties due in 1993

Addendum

RUSSIAN FEDERATION*

[27 September 1994]

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* For the initial report submitted by the Government of the Union of Soviet Socialist Republics, see CCPR/C/1/Add.22; for its consideration by the Committee, see CCPR/C/SR.108, SR.109 and SR.112 and Official Records of the General Assembly, Thirty-third Session, Supplement No. 40 (A/33/40), paragraphs 409-450. For the second periodic report of the Union of Soviet Socialist Republics, see CCPR/C/28/Add.3; for its consideration by the Committee, see CCPR/C/SR.564-567, SR.570 and Official Records of the General Assembly, Fortieth Session, Supplement No. 40 (A/40/40), paragraphs 251-319. For the third periodic report of the Union of Soviet Socialist Republics, see CCPR/C/52/Add.2; for its consideration by the Committee, see CCPR/C/SR.928-931 and Officials Records of the General Assembly, Forty-fifth Session, Supplement No. 40 (A/45/40), paragraphs 72-119.

The information submitted by the Russian Federation in accordance with the guidelines concerning the initial part of reports of States parties is contained in the core document (HRI/CORE/1/Add.52)

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INFORMATION CONCERNING PARTICULAR ARTICLES OF THE COVENANT

Article 1

1. The right of peoples to self-determination is reflected in the legislation of Russia, and is consistently embodied in its domestic and foreign policy. The adoption of Presidential Decree No. 1400, dated 21 September 1993, "Constitutional Reform by Stages in the Russian Federation" was a factor conducive to realization of the right of the people of Russia to decide their own fate in the present stage. The Constitution of Russia now in force, which is based on recognition of "universally recognized principles of the equality and self-determination of the peoples" (Preamble), was adopted in accordance with the Decree and the expression of the people's will on 12 December 1993. The new Russian State order heralded the turning point in consolidation of the integrity of Russia on genuinely federal principles, on the basis of the freedom and equality of the subjects of the Federation, their rights and duties, and the balance of their interests, with all due consideration for their national distinctiveness and territorial characteristics. The establishment of the Russian Federation as a new, independent State formed as a result of the collapse of the former USSR and the evolution of the federal structure of Russia signified realization of the right to self-determination possessed by the many nationalities making up the Russian people, and made it possible to halt the descent both towards rigid centralism restrictive of the rights of the peoples and towards the "vesting of sovereignty" in the members of the Federation, destructive of the very basis of their viability and their survival under present-day conditions. The way in which the right to self-determination is understood in Russia embraces various forms of national territorial and national cultural autonomy.

2. The freedom of the peoples to establish their own political status and ensure their economic, social and cultural development is reflected, in particular, in article 3 of the Constitution:

> "1. The bearer of sovereignty and the sole source of authority in the Russian Federation shall be its multi-ethnic people.
>
> "2. The people shall exercise their power directly, and also through the State authorities and the local authorities.
>
> "3. The referendum and free elections shall be the highest direct expression of the people's authority.
>
> "4. No one may misappropriate power in the Russian Federation. Seizure of power or usurpation of authority shall be punishable under Federal law."

3. The possibility for the numerous peoples making up the country's population freely to establish their political status within the framework of the Federation is guaranteed in article 65 of the Constitution, which provides for "Admission into the Russian Federation or the establishment within it of a new member in the manner laid down by Federal constitutional law."

4. The combination of the principles of self-determination and federalism is defined in paragraphs 3 and 4 of article 5 of the Constitution:

> "3. The federal structure of the Russian Federation shall be based on its integrity as a State, on the unity of the system of State authority, on the delimitation of jurisdiction and powers between the State bodies of the Russian Federation and those of the members of the Russian Federation, and on the equality and self-determination of the peoples in the Russian Federation.
>
> "4. All members of the Russian Federation shall be equal in their relations with the Federal authorities."

5. The right of the peoples freely to dispose of their natural wealth and resources (para. 2 of art. 1 of the Covenant) is reflected in article 9 of the Constitution:

> "1. Land and other natural resources shall be used and conserved in the Russian Federation as the basis of the life and activity of the peoples inhabiting the territory concerned.
>
> "2. Land and other natural resources may be in private, State, municipal and other forms of ownership."

6. The guarantee for the inalienable right of peoples to the means of existence that belong to them is provided by paragraph 3 of article 67, which states that "The boundaries between members of the Russian Federation may not be altered without their mutual consent."

7. This right is matched by the guarantee of the unity of the country's economic area as laid down in article 8 of the Constitution. As noted in the President's message of 24 February 1994 to the Federal Assembly "no one ethnic group may have an exclusive right of control over territory, institutions of authority and resources", from which it follows that decisions must be arrived at by agreement and must have regard to the interests of the various national groups.

8. As regards the preservation of the natural environment and way of life, development of traditional branches of the economy and occupations in settlement areas and the economic activity of the indigenous peoples, the Russian parliament is currently concluding its examination of the provisions of Principles of the Legislation of the Russian Federation on the Legal Status of Peoples that are Small in Numbers. These Principles, which were approved on the second reading in October 1993, are designed to assert the inalienable nature of the property of these peoples, which may not be alienated without their agreement for industrial or other use unconnected with traditional branches of the economy and traditional occupations.

9. Presidential Decree No. 850 of 4 June 1993 "On Urgent Measures Concerned with the Organization of the State in the Russian Federation" was adopted to facilitate the practical development of the State on the basis of democracy and consistent federalism. The free choice of federalism and the federal structure of the State system of Russia also finds expression in the

Constitution in the context of the recognition of local self-government and the provision of guarantees for it (art. 12), the inclusion of the matter of the establishment of common principles for the organization of local self-government within the joint authority of the Russian Federation and its members (art. 72), and the statement of the rights and powers of local self-government (arts. 130-133).

10. In addition to the Act on "Local Self-Government", the following Acts concerned with local self-government have been adopted and are in force in Russia: Decree of the Supreme Council of the Russian Federation of 27 December 1991 "Division of State Property in the Russian Federation into Federal Property, the State Property of the Constituent Republics of the Russian Federation, the Krais and Oblasts, the Autonomous Oblast and the Autonomous Okrugs, the Cities of Moscow and Saint Petersburg, and Municipal Property" and the Decrees of the President of the Russian Federation No. 1760 of 26 October 1993 "Reform of Local Self-Government in the Russian Federation", No. 1617 of 9 October 1993 "Reform of Representative Bodies and of the Institutions of Local Self-Government in the Russian Federation", and No. 2265 of 26 December 1993 "Guarantees of Local Self-Government in the Russian Federation". In accordance with the last-mentioned Decree, the leader of local self-government presides over meetings of the elected representative body of local self-government and is the head of the corresponding administration (clause 4); he and the other officers of the local administration may be members of the corresponding representative body of local self-government (clause 5). It is proposed that special guarantees for the self-government of those of the peoples of Russia whose numbers are small and for their participation in the activity of State bodies should be confirmed in the Principles of the Legislation of the Russian Federation on the Legal Status of Peoples that are Small in Numbers. It is proposed that new legislation should be adopted shortly on local self-government and on budgetary taxation, which should provide the economic foundations for local self-government. The parliamentary hearings on the reform of local self-government in the State Duma (14-15 March 1994) were followed by the adoption of a recommendation that the practice of legal protection for the rights of self-government be developed, that the leaders of the administration of towns and settlements be elected rather than appointed, and that where possible the leaders of members of the Federation should be elected.

11. Provision for a number of specific measures in this area is made in the Decree No. 734-1GD of the State Duma of the Federal Assembly "Ensuring the Constitutional Rights of the Population to Local Self-Government in the Statutory Instruments of Members of the Russian Federation", dated 10 June 1994.

12. The Act "The Rehabilitation of Repressed Peoples" of 26 April 1991 was a historic act of retribution concerning the illegally repressed peoples who were subjected to enforced resettlement and other illegal acts during the Soviet period; under the terms of the Act it was recognized that they had the right to restoration of their territorial integrity, to the re-establishment of their national State formations or to the creation of new ones, in accordance with their expressed will, and also to compensation for the damage

caused by the State. Despite the indisputably positive nature of this Act, it was not accompanied by the machinery for its implementation, in which context there was no provision on territorial restoration.

13. Other legislation for implementation of this Act was also adopted. There was, for example, Decree No. 4721-1 of the Supreme Council of the Russian Federation, dated 1 April 1993, "Rehabilitation of the Russian Koreans", which established their right to free national development, giving them equal opportunities with other peoples to exercise their political rights and freedoms guaranteed by the legislation in force, and establishing their right of voluntary return on an individual basis to the places where they had previously lived in the Russian Federation.

14. In its foreign policy the Russian Federation is a consistent advocate of the right of self-determination in accordance with paragraph 3 of article 1 of the Covenant. At the World Conference on Human Rights in 1993 the Russian Federation supported the inclusion in the Vienna Declaration and Programme of Action of paragraph 2 of part I and other provisions concerning confirmation of the principle of self-determination.

Article 2

15. In relation to paragraph 1 of article 2 of the Covenant, the Constitution lists all the inadmissible forms of discrimination, including discrimination on grounds of sex, race, nationality, language, origin, property status or official status, place of residence, attitude to religion, persuasions, membership of associations open to the public and other circumstances.

16. In relation to paragraph 2 of article 2 of the Covenant and under the terms of article 2 of the Constitution the State is obliged to ensure human rights and freedoms, while article 46(3) recognizes the provision of the Covenant concerning the means of international legal protection: "All persons shall be entitled, in accordance with the international treaty obligations of the Russian Federation, to apply to inter-State bodies concerned with safeguarding human rights and freedoms if all available domestic means of legal protection have been exhausted". In addition, paragraph 2 of article 45 recognizes the right of the individual to defend his or her rights and freedoms by all legal means: "Each person shall be entitled to defend his or her rights and freedoms in all ways not prohibited by the law".

17. The content of paragraph 3 of article 2 of the Covenant is reflected in a number of the provisions of the Constitution. Thus, paragraph 1 of article 45 establishes the general principle of the protection of civil rights and freedoms when it states: "State protection for human and civil rights and freedoms shall be guaranteed in the Russian Federation". Paragraph 1 of article 46 guarantees the rights of each person to protection of his or her rights and freedoms. Paragraph 1 of article 48 guarantees the right to receive qualified legal assistance. In cases for which provision is made by the law, legal assistance is provided free of charge. This requirement is reflected in a Government Decree dated 7 October 1993 "Payment from Public Funds for the Services of Lawyers". In accordance with article 47 of the Code

of Criminal Procedure, this Decree defines the obligation on the Ministry of Finance to make provision for the allocation of resources from the State budget for the provision of free legal aid.

18. In accordance with article 52 of the Constitution: "The rights of victims of crimes or abuse of authority shall be safeguarded by the law. The State shall ensure that victims have access to justice and compensation for damage caused." However, the testimony of legal defence organizations suggests that compensation for damage actually occasioned is a matter that calls for the provision of additional procedures.

19. Government Decree No. 1319, dated 23 December 1993, adopted measures for the establishment of a general State system for the registration of the population and for official documentary proof of the identity of citizens.

20. The right to judicial protection of rights and freedoms is guaranteed in the Constitution (art. 46): "Every individual shall be guaranteed legal protection of his or her rights and freedoms".

21. Legal proceedings may be taken against the decisions and actions (or the failure to act) of official bodies, local self-governing authorities, societies open to the public and officials. The procedure to be followed is laid down in the Act of 27 April 1993 "Legal Proceedings Against Actions and Decisions that Infringe Civil Rights and Freedoms".

22. Article 2 of the Labour Code of the Russian Federation (LCRF) in the draft of 25 September 1992 guarantees judicial protection for labour rights.

23. Article 210 of the LCRF significantly extends the judicial protection of the labour rights of all workers whatever their sphere of employment and whatever the post occupied.

24. The courts hear labour disputes in actions brought by workers, the administration or trade union organizations defending the rights of their members. When workers have recourse to the courts concerning claims arising from relations under labour law they are exempted from the payment of State legal costs.

25. The LCRF increases the level of guarantees of the rights of women to work, and to congenial and healthy working conditions, and also makes provision for various benefits for workers with family responsibilities, including benefits for persons bringing up children. Article 162 of the LCRF extended the definition of women who may not be employed on night work, on overtime work and work on rest days, and who may not be sent on postings. The new draft of article 163 lays it down that women who have children between the ages of 3 and 14 years (16 years in the case of invalid children) may also not be employed on overtime or sent on postings without their agreement. Paragraph 1 of article 163-1 of the LCRF guarantees the right of parents (guardians, foster-parents) bringing up a child who is an invalid to have one additional day off with pay per month.

26. In accordance with the Act of the Russian Federation of 4 April 1992 "Additional Measures for the Protection of Mothers and Children" the duration

of maternity leave is set at a calendar period of 70 days before and 70 days after delivery. Should there be complications in the delivery the maternity leave following delivery is extended to 86 days, and when two or more children are born it is extended to 110 days. Maternity leave before and after delivery is calculated in toto and is granted to the woman in full, irrespective of the actual number of days of leave taken before the birth. Similar provisions are set out in article 165 of the LCRF.

27. The new draft of article 170 of the LCRF provides additional guarantees for pregnant women and women with children concerning their engagement and dismissal, and also concerning the legal machinery for the protection of an infringed right to work. Article 172-1 states that the guarantees and benefits provided to women in connection with pregnancy (restrictions on night work and overtime working, restrictions on requiring work on rest days and sending on postings, the granting of additional leave, the establishment of preferential working conditions and other privileges laid down by the legislation in force) shall be extended to fathers bringing up children without a mother and to guardians (foster-parents).

28. Provisions of the Constitution establish the position that persons acting in an official capacity are not relieved of responsibility. This is laid down in article 53 of the Constitution, which states that "Every person shall have the right to be compensated by the State for damage caused by the illegal acts (or the inactivity) of the authorities or their officials". Article 58-1 of the Code of Criminal Procedure, which makes provision for the responsibility of investigating and preliminary hearing bodies and the courts to take the measures provided by the law to compensate damage caused to a citizen as a result of illegal prosecution, has been supplemented by the requirement on these officials to explain to the citizen the procedure for restitution of his infringed rights.

29. The status of the Russian Armed Forces has been strengthened and the responsibilities and obligations of the authorities and the administration with respect to the Russian Army have been defined by the adoption of the Acts "On Defence", "Status of Members of the Armed Forces", "Conscription and Military Service", "Pension Provision for Persons who have carried out Military Service in Units of the Ministry of the Interior and Their Families" and some other statutory instruments.

30. The Act "Status of Members of the Armed Forces" occupies a special place among the Acts referred to above. The status of members of the armed forces was not previously distinguished as a separate legal category. The Act "Universal Military Service" declared that members of the armed services had the whole gamut of civil rights and freedoms, i.e that they had general civil status. The rights and freedoms enumerated in the Constitution apply in full measure to members of the armed services, but the content of some provisions differs slightly from the general civil provisions on account of their constraints.

31. The Act "Status of Members of the Armed Forces" (art. 5) contains the special assertion that members of the armed forces are under the protection of the State. In accordance with that provision, the insulting of members of the armed services, violence and the threat of violence, attacks on their life,

health, honour, dignity, dwelling and property, and also other acts that infringe and restrict their rights in connection with the carrying out of their obligations of military service are recognized as aggravating circumstances in the assessment of liability and in deciding punishment.

32. Members of the armed services are not entitled to combine military service with work in enterprises, institutions and organizations, and they are prohibited from assisting individuals and corporate bodies in their capacity as members of the armed forces in carrying out entrepreneurial activity. The State compensates for these and some other restrictions on the rights and freedoms of members of the armed forces (see also in relation to arts. 12, 18, 19, 21 and 25 of the Covenant) by the provision of additional rights and concessions, by increased measures of social protection (tax concessions, concessionary rates for amenities, the right to housing, protection of life and health, medical care, a higher pension etc.). Decree No. 295 of the Council of Ministers and the Government of the Russian Federation, dated 5 April 1993, set out the procedure for compulsory State insurance for members of the armed forces, for conscripts, and for officers and other ranks in units of the Ministry of the Interior.

33. A special regime is provided for the category of Russian citizens or other persons who have been obliged to or who intend to leave their place of permanent residence in the territory of another State or in Russian territory as a result of violence committed against them or members of their families or of persecution in any form or of a real risk of being discriminated against and persecuted in connection with hostile campaigns, mass disturbances of public order and other circumstances that significantly infringe human rights. Such a regime is established in the Act of 19 February 1993 on "Enforced Migrants", which sets out in detail the procedure for acquiring the status of "enforced migrants", their rights and obligations, and the procedure for awarding compensation and rendering assistance to these persons. The Russian Federal Migration Service, which functions in accordance with the Statute of 1 March 1993 under which it was set up, is responsible for the coordination of matters relating to the carrying out of the Act.

34. Guarantees for the rights of foreigners and stateless persons in Russia are provided by the Constitution, which is based on the recognition, observation and protection by the State of human and civil rights (arts. 2 and 17), and the equality of the peoples under the jurisdiction of the Russian Federation before the law and the court (art. 19). This fundamental principle is guaranteed in the following provision of paragraph 3 of article 62: "Foreign citizens and stateless persons in the Russian Federation shall enjoy the same rights and have the same obligations as citizens of the Russian Federation, except in instances specified in Federal law or by an international treaty of the Russian Federation."

35. Provision for exclusion of these persons from the national regime is made only in relation to those rights that belong exclusively to citizens, i.e. in relation to the right to participate in running the affairs of the State, and in elections and referenda, to administer justice and to enter the civil service (art. 32), to appeal to State authorities and local self-governing authorities (art. 33), to defence and protection abroad (art. 36), and also in relation to liability to military service (art. 59) and guarantees against

expulsion and extradition (art. 61). As regards the rights of foreigners to assembly, meetings and demonstrations, such a right is implicit in the context of paragraph 4 of article 15 of the Constitution, in accordance with which: "Universally recognized principles and provisions of international law and the international treaties to which the Russian Federation is a party shall be a part of its legal system. ...", and also paragraph 1 of article 17, according to which: "In the Russian Federation human and civil rights and freedoms shall be recognized and guaranteed under the universally acknowledged principles and rules of international law and in accordance with this Constitution". The right of foreigners to the freedom of peaceful assembly and association must therefore be recognized, in particular on the basis of article 20 of the International Declaration of Human Rights.

36. The USSR Act of 24 June 1981 "Legal Status of Foreign Citizens in the USSR" is in force at the present time in the Russian Federation. In connection with the fact that its provisions do not correspond to the realities of the situation resulting from the collapse of the USSR, a draft act on the legal status of foreign citizens in the Russian Federation is currently in an advanced stage of preparation. The legislation on foreigners has to be updated because of the need to rule out illegal restrictions on the rights of these individuals, including restrictions arising from the taking of administrative decisions on the application to them of increased rates for particular kinds of services.

37. Special procedures are provided in relation to the hiring of foreign citizens for work in Russia. It has been laid down by the Presidential Decree of 16 December 1993 "Enlistment and Use of Foreign Labour Power in the Russian Federation" that foreigners who have entered Russia other than in the manner laid down are liable to expulsion from Russia. This Decree confirms the Regulations on the Enlistment and Use of Foreign Labour Power in Russia (see also in relation to art. 12 of the Covenant).

38. There is a special guarantee in the Constitution (art. 63) for persons who are being pursued for their political convictions:

> "1. The Russian Federation shall grant political asylum to foreign citizens and stateless persons in accordance with the universally recognized rules of international law.
>
> "2. The extradition to other countries of persons being pursued for their political convictions, or for actions (or failure to act) not recognized as a crime in the Russian Federation shall not be permitted. The extradition of persons accused of having committed a crime, and also the handing over of convicted persons to serve their sentence in other States shall be carried out on the basis of Federal law or of an international treaty to which the Russian Federation is a party."

39. In connection with the obligations undertaken by Russia on its accession to the 1951 Convention relating to the Status of Refugees and the 1976 Protocol thereto, an Act on "Refugees", dated 19 February 1993, has been put

into force, which sets out in detail the procedure for recognition of the status of refugees and guarantees of their rights and obligations, and matters relating to the rendering of appropriate assistance to them.

40. Russia attaches great importance to the provision of legal protection for human rights in the country (a Federal programme of activities concerned with the protection of human rights was drafted in 1994) and in countries that are close neighbours. A programme for the protection of fellow countrymen abroad is currently being prepared. Guarantees for the protection of human rights are included in the Agreement on the Creation of the Commonwealth of Independent States of 8 December 1991, and in the Statute of the CIS Commission for Human Rights. A convention on human rights in the CIS is in course of preparation (see also in relation to art. 27 of the Covenant).

Article 3

41. The constitutional guarantees of equality of rights between men and women stemming from article 3 of the Covenant are embodied in paragraph 3 of article 19 of the Constitution: "Men and women shall have equal rights and freedoms and equal opportunities to exercise them".

42. The legislation of Russia does not contain any provisions that place legal restrictions on rights on grounds of sex. Information on the Russian legislation, on how the law is applied in practice and on the situation in the country concerning measures to ensure the equality of rights between men and women is to be found in the country report of Russia to the Fourth World Conference on Women: Action for Equality, Development and Peace, and also in the fourth periodic report on the application in the Russian Federation of the Convention on the Elimination of All Forms of Discrimination against Women, which will be submitted to the United Nations Commission on the Elimination of Discrimination against Women at the appointed time in September 1994.

43. The women's organizations that existed in Russia up to 1993 were not entitled independently to nominate candidates to serve on representative bodies, because they lacked the status of a political organization. In 1993 the political movement Women of Russia, set up by the Union of the Women of Russia, the Association of Businesswomen and the Union of Naval Women, was given the possibility of nominating its candidates for the Federal Assembly.

44. Women's service in the armed forces is regulated by the legislation on conscription and military service. Thus, the Act "Conscription and Military Service" of 11 February 1993 makes provision for the primary registration of women in offices of the armed forces after they have acquired a military qualification (art. 8), for their military training under programmes for the training of officers for the reserve (art. 17), and for the right of women between 20 and 40 years of age to sign on for military service (art. 30). The Act "Status of Members of the Armed Forces" of 22 January 1993 stipulates that servicewomen shall enjoy the same rights and privileges as are provided by the legislation on protection of the family, mothers and children (art. 16).

45. In 1990 some 3.5 per cent of members of the armed forces were women; in 1993 the figure was 9 per cent.

46. The existing system for the legal protection of the family, women and children in Russia is still not sufficiently effective. The actual position of the family, women and children is being adversely affected by the retarded development of the legal system that regulates family relations, a system that is continuously evolving in changing conditions, and that has to do with ensuring the equality of the rights and obligations of the spouses, and with the upbringing and protection of children; this retarded development has, as a consequence, the inadequacy of the legal machinery required to ensure the effectiveness of the rights and mutual obligations laid down by the law, and liability for breaches of the legislation and of guarantees on the part of the State.

47. The transition to new social relations and the formation of a market economy necessitate the re-examination of the entire legislative system from the point of view of the policy of equal opportunities for men and women in all spheres of life, including family, work and civil interrelationships. Consideration is being given to the drafting of legislation on equal opportunities for men and women and on equal opportunities in the labour market.

48. The labour legislation formally guarantees equality of the rights of men and women in all spheres of labour relations, as well as providing a special system of rules in connection with the reproductive function of women. The Act "Employment of the Population in the Russian Federation" of 19 April 1991 requires State policy in the sphere of employment to be directed towards ensuring equality of opportunity for all citizens living in Russia irrespective of their sex (art. 5). The machinery for giving effect to the statutory instruments has not, however, been developed and there is scarcely any verification of their application, especially as regards discrimination against women. In particular, it is practically impossible to prove in court that refusal to employ pregnant women and women with young children is discriminatory.

49. Objectivity requires some mention of the problem of protection for the rights of the father, which may be regarded as restricted by comparison with the rights of the mother, for access to a child after divorce from the mother, and for the upbringing of their children. The legal equality of rights between parents on this score is interpreted by the courts as the priority of the mother, the burden of proof to the contrary being left up to the father. In this context, consideration is being given to the feasibility of drafting an act to protect mothers, fathers and children. The Russian human rights association "Fathers and Children" advocates the achievement of equality in this sphere.

50. The judicial system is really being used to ensure equality of the rights of men and women. In March 1994, for example, the Court of Appeal of the President of the Russian Federation for information disputes considered an appeal lodged by the Union of the Women of Russia and the Lawyers' Union concerning breaches of the provisions of the Constitution of the Russian Federation on the equality of women in a number of the organs of the mass-circulation printed media, namely the placing of advertisements

announcing recruitment for employment on a competitive basis, in which it was stated that the competition was open only to men. The Presidential Court of Appeal ruled that such facts were a gross breach of the equality of rights between men and women and served notice on the editors-in-chief of the publications concerned to that effect.

Article 4

51. Matters concerning the introduction of a state of emergency and the placing of some restrictions on rights and freedoms in the territory of the country are dealt with in the Constitution (art. 56) in accordance with article 4 of the Covenant. The Act "States of Emergency" of 17 May 1991 establishes the conditions, grounds and procedure for the introduction of a state of emergency and the forms of State control for its duration, and provides for the measures that may be taken under the conditions obtaining, and also provides guarantees of the rights and obligations of citizens and officials.

52. The introduction of a state of emergency in Moscow in October 1993 was connected with the fact that a situation had arisen in which the steps being taken by the Executive for the establishment of a State subject to the rule of law and for the carrying out of economic reform had encountered the opposition of the all-powerful Congress of People's Deputies. The President took the emergency measures that he was obliged to take to dissolve the Supreme Soviet and the Congress so as to overcome the legal impasse by giving the people of Russia the right to express themselves on the matter in elections. The President's actions were in contravention of article 121-6 of the Constitution (the powers of the President may not be used to suspend the powers of any of the legally elected State bodies). It is, however, important to have regard to the fact that this very article had been inserted in the Constitution already in force as a countermeasure against a matter that had been debated in Russia of the right of the President to announce early parliamentary elections. Had the President not acted as he did, the basic principles of the Constitution (the principles of the power of the people and the separation of powers) would have been trampled on, the economic reform would have been buried, and preservation of the unity and integrity of the Russian Federation would have been put at risk.

53. The democratic thrust of the steps taken by the President and the Government is clearly apparent from the fact that the Decree of 21 September 1993 "Constitutional Reform by Stages in the Russian Federation" fixed the precise date for elections to the State Duma, gave a guarantee that they would be free elections, and fully maintained human rights and basic freedoms, including the right to participate in the running of the country, and freedom of association and political activity. Both the President and the Government repeatedly stressed that a way out of the crisis would be found without any use of force, with proper respect for the generally recognized standards of political struggle with the opposition.

54. The possibility of controlling the crisis by political means was exhausted when Khasbulatov and Rutskoy called on 3 October for armed seizure of the Kremlin, the Moscow City Hall building and the State television studio at Ostankino. Appeals and actions aimed at the seizure of State power turned

the political resistance of the opposition into an armed uprising. Supporters of the Supreme Soviet, with the backing of organized armed formations, unleashed carnage, street disorders and pogroms posing a serious threat to life in Moscow on 3 October 1993. The security of Russia was called into question. As guarantor of the security of the country and its citizens, the President introduced a state of emergency in the capital during the evening of 3 October 1993 in accordance with the Act "States of Emergency" and the International Covenant on Civil and Political Rights and took measures to ensure its regime. Faced with the refusal of the opposition to lay down its arms and the continuing actions of the militants, which threatened the life and health of the population, the President was obliged to put down the revolt.

55. The actions of the President were equal to the acuteness of the situation at all stages in the confrontation. The principle of proportionality embodied in the International Covenant on Civil and Political Rights was thus observed. Even in the armed suppression of the revolt everything possible was done to minimize loss of life, and the possibility for the insurgents to leave the parliament building without hindrance was maintained in all stages of the operation to free the White House.

56. As regards the temporary restrictions on some rights and freedoms in connection with the introduction of the state of emergency, they are not at variance with the universally recognized rules of international law (art. 4 of the International Covenant on Civil and Political Rights) or with the provisions of the Russian "States of Emergency" Act of 17 May 1991 (suspension of the activity of public organizations impeding normalization of the situation, restrictions on the freedom of the press and other mass media).

57. Abuses of civil rights that occurred during the state of emergency are being followed up. For example, evidence of infringements of civil rights during the period of the action in October 1993 has been the subject of an investigation by the procurator and criminal proceedings have been initiated where necessary against illegal acts by members of the armed services and the militia. This investigation revealed the inactivity of a number of ministries and the inadequacies of some Acts that need to be amended. Thus, attention was drawn to the lack of rules governing the procedure for suspending the activity of association open to the public in the 1990 legislation concerning them in force in Russia.

58. The introduction of a state of emergency in 1992 in some territories of North Ossetia and Ingushetia was accompanied by the setting up of a temporary Federal governmental body overseeing the state of emergency in accordance with the relevant Presidential Edicts and on the basis of the "Provisions on the Provisional Administration in These Regions", of 29 May 1993, which were approved by the President (see also in relation to arts. 1, 20 and 27 of the Covenant).

Article 5

59. The requirements of this article are reflected in paragraphs 1 and 2 of article 55 of the Constitution:

> "1. The enumeration of fundamental rights and freedoms in the Constitution of the Russian Federation shall not be interpreted as a denial of or detraction from other generally recognized human and civil rights and freedoms.
>
> "2. Acts that abolish or detract from human rights and freedoms shall not be promulgated in the Russian Federation."

60. Inadequate interpretation of any provision of the Covenant is excluded by a combination of the provisions of the Constitution relating to, on the one hand, recognition of rights and freedoms in accordance with the universally acknowledged principles and rules of international law and in conformity with the Constitution (art. 17) and, on the other hand, recognition of these rights and freedoms as being directly effective (art. 18) in the context of the primacy of the rules of an international agreement (art. 15).

61. In practice this article requires the State to make a clear assessment of the compatibility of the activity of individuals or groups in its territory with the requirements of the Covenant and to adopt decisive measures to halt their activity should it be aimed at the destruction of rights and freedoms or their restriction to a greater degree than is recognized for them in the Covenant.

62. As the transition of Russian society to a market economy progresses, evidence of indirect limitation on the exercise of individual human rights is being uncovered in the establishment of trading organizations, the purpose of which is to take over the functions of State bodies that are obliged to supply specified documents free of charge (concerning certificates of registration of births, deaths, marriages, etc., allocation of plots of land, privatization and so on), and also to perform additional services. Investigation by the procurator of some such trading organizations extorting illegal payments from the population has led to the lodging of a number of protests concerning established facts, the overturning of some of the decisions of local authorities and discontinuation of the activities of such trading organizations.

Article 6

63. The right to life is guaranteed in the Constitution (art. 20) and is subject to State protection, as are all human and civil rights and freedoms (art. 45).

64. The Labour Code provides a system of measures aimed at protection of the life and health of workers (chap. 10, Labour protection). The administrations of enterprises, establishments and organizations are given the responsibility for ensuring health and safe working conditions and for the introduction of up-to-date safety measures (art. 139).

65. Arbitrary causing of death is an act carrying criminal liability under the Criminal Code. Paragraph 3 of article 41 of the Constitution stipulates that "The withholding by officials of facts and circumstances that pose a threat to life and health shall entail liability in accordance with Federal law". Offences against the life and health of the individual are a separate category of offences entailing criminal liability under the Criminal Code (chap. 3). Among new elements we must distinguish increased liability for the development, production, storage, supply and transportation of biological weapons and for breaches of the safety regulations on the handling of microbiological and other biological agents and toxins when these actions have led to the death of a human being or have impaired health (arts. 67-2 and 222-1 of the Criminal Code, introduced by an Act of 29 April 1993).

66. Guarantees for protection of the health of members of the armed services are to be found in the Act "Status of Members of the Armed Services". Thus, the duties of commanders include concern to preserve the life and health of members of the armed services (art. 16), including ensuring safety requirements in the conduct of military duties and exercises, and in the use of weapons and military hardware. Attempts on the life of members of the armed forces are recognized as an aggravating circumstance when determining liability and in sentencing (art. 5).

67. The content of paragraph 2 of article 6 is reflected in paragraph 2 of article 20 of the Constitution of the Russian Federation, which specifies: "Until its abolition, the death penalty may be prescribed by Federal law as an exceptional penalty for particularly serious crimes against life, with the accused being granted the right of trial in a court with the participation of jurors".

68. The list of offences for which the death penalty may be applied has been appreciably reduced. An Act of 5 December 1991 rescinded the death penalty for aggravated infringement of the rules on currency operations, for robbery on an especially large scale, and for the taking of bribes in especially aggravating circumstances. The following is a list of the serious crimes to which the death penalty applies: premeditated murder with aggravating circumstances (art. 102 of the Criminal Code); betrayal of the Motherland; terrorism; espionage; hijacking; banditry; rape.

69. An Act of 17 December 1992 provides for the substitution of life imprisonment for the death penalty.

70. The death penalty may not be pronounced on women, on persons who had not reached 18 years of age before the crime was committed, or on men more than 65 years old (Act of 29 April 1993).

71. A person condemned to death shall have the right to appeal against the sentence to the court of appeal or to a supervisory body, and shall also have the right to seek a pardon from the President of Russia (art. 89 of the Constitution).

72. In accordance with sentences legally carried out the death penalty was used in Russia 223 times in 1993, 159 times in 1992 and 147 times in 1991. The death penalty was exacted mainly for premeditated murder with aggravating circumstances.

73. In accordance with information from the Russian NGO, the "Right to Life" Society Against the Death Penalty and Torture, a number of incidents that occurred in the putting down of the revolt in Moscow on 3-4 October may be qualified as executions without trial.

74. The Russian authorities note with concern that the number of victims of disasters as a result of which innocent persons perish every year is on the increase in the country (1,224 individuals perished in 1993 as a result of exceptional situations). The Ministry of the Russian Federation for Civil Defence, Emergencies and Disaster Relief, which prepared the report "Emergency situations during 1993", has prepared recommendations for dealing with emergencies and for disaster relief, which include:

(a) More exacting requirements for State inspectorates concerning effective monitoring of the situation where a potential hazard exists, and of the sanitary and epidemiological situation in the Russian Federation;

(b) Prompt financing of measures to prevent emergencies and to deal with those that occur, and to ensure the safety and protection of the population as envisaged in the Federal target programmes that have been approved;

(c) Creation of territorial emergency reserve funds of finance, foodstuffs, medical supplies and equipment for disaster prevention and relief;

(d) Increased readiness to supply manpower and resources for disaster prevention and relief;

(e) Allocation of financial resources from the reserve fund of the Government of the Russian Federation for the creation of a rapid response fund in Russia for timely disaster prevention and relief.

75. Nuclear weapons located in the territory of Ukraine and Kazakhstan, where the authorities proved not to be in a position after the collapse of the USSR to ensure that their warheads were maintained in a safe condition, are a source of increased risk to human life. The absence of a control and servicing infrastructure in these countries on the threshold of the commencement in 1995 of the winding down process at the end of the time-limit on the guaranteed servicing of the rockets was one factor that hastened the conclusion by these countries of the agreements with Russia and the United States needed in the context of the START-1 treaty. These agreements, especially the agreement on the guaranteed servicing of Ukrainian nuclear weapons by Russian specialists, the agreement on the conditions and order of priority for the handing over of nuclear warheads to Russia, with a schedule for the handing over, and the agreement of Kazakhstan with Russia and the United States on conditions for the destruction of nuclear weapons, have helped to reduce the threat of a disaster.

76. The right of Russians to life is under serious threat in connection with the unsatisfactory safety level of Russian nuclear installations. In execution of Presidential Ordinance No. 224-rp of 9 April 1993, Gosatomnadzor of Russia has examined all sites where there is a nuclear and radiation hazard with a view to ensuring nuclear and radiation safety in them and their physical protection. Examination of more than 200 such sites has shown them to be in an unsatisfactory state from the point of view of the potential threat to human life, the need for additional legal regulation, and a solution to the problem of the processing and safe disposal of spent nuclear materials in accordance with present-day standards. The results of the examination were published in "Nezavisimaya gazeta", issue 30 (706) of 16 February 1994.

77. The sanitary legislation of Russia, based on the Act of 19 April 1994 "Sanitary and Epidemiological Well-Being of the Population", makes provision for a wide range of guarantees and measures to prevent any threat to life and to the interests of society arising from disease, poisoning and epidemics, and to prevent any harmful effects on the human organism from environmental factors, from the consumption of foodstuffs, and from lethal radiation sources. The Act lays down operational procedures for the State Sanitary and Epidemiological Service of Russia. In view of the threat to human life constituted by AIDS (HIV), an act on "AIDS prevention" is being drafted in Russia and has been submitted to expert scrutiny by the World Health Organization.

78. Defence of the right to life in the context of the interrelationships between producers and consumers is governed by legislation. Thus, in accordance with Act No. 5304-1 of 1 July 1993 "Amendments and Additions to the Legislation of the Russian Federation in Connection with the Regularization of Liability for Illegal Trade", a new draft of article 157 has been inserted in the Criminal Code. That article makes it a punishable offence to produce or sell goods or provide services that clearly fail to meet safety requirements for protection of the life and health of consumers and customers, and that have adversely affected health or have been a potential threat to it.

79. There is serious cause for concern over cases of the theft of nuclear materials, and of the excessive radiation of individuals in installations constituting a nuclear or radiation hazard, of which there are some 14,500 in Russia. Although the Russian Government is aware of the problems arising in this connection, the interdepartmental inspection system still does not extend to all such installations, and in particular not to those under the jurisdiction of the Ministry of Defence. Lack of finance is making it impossible at the present time to meet the cost of the measures adopted by the Government in connection with the situation at nuclear facilities: no resources at all have been allocated for the measures in one of the two 1993 Decrees, and only 15 per cent of the requirement has been allocated for the other.

80. Protection of the right to life against criminal and other illegal attempts against the individual is one of the priorities of the militia as laid down in the Act on the Militia of 18 April 1991 (art. 1), which regulates the responsibilities and powers of the militia, including the grounds and procedure for the use of force, special means and firearms (arts. 12-15). With a view to ensuring compliance with this assignment, units of the Ministry

of the Interior are also guided by the provisions of the Act "Operational and Search Activity in the Russian Federation" of 13 March 1992, by the Act "Amendments and Additions to the Corrective Labour Code of the RSFSR" of 12 June 1992, by the Regulations on Service in Units of the Ministry of the Interior of the Russian Federation, and by the Oath of Allegiance of Members of Units of the Ministry of the Interior, both approved by Decree of the Supreme Council of the Russian Federation dated 23 December 1992, by the Rules for the Use of Special Means for the Armament of Units of the Ministry of Interior of the RSFSR (No. 455) approved by Decree of the Council of Ministers of the RSFSR dated 3 September 1991, by the Regulations on the Public Safety Militia (Local Militia) in the Russian Federation, approved by Edict No. 209 of the President of Russia dated 12 February 1993, and the Rules for the Internal Order of Corrective Labour Establishments (Order No. 421, dated 23 November 1992, of the Russian Ministry of the Interior).

81. The admissibility of loss of life as a result of the legal use of weapons by members of units of the Ministry of the Interior follows from the Act "The Militia", which refers to cases of the detention of an individual who offers armed resistance or who has committed a serious offence, and to cases of prevention of the escape of such an individual (para. 1 of art. 15). The investigating magistrate must be notified within 24 hours by special report in the event of death or injury arising therefrom. This Act specifies that the use of weapons shall be commensurate to the risk of criminal violence.

82. The Act "Institutions and Bodies that Administer Punishment in the Form of Deprivation of Liberty" of 21 June 1993, in which the criterion of commensurateness has been given its clearest expression, provides for the use of physical force, special means and weapons and sets out the criteria for such use, including cases of the occurrence of a direct threat to the life and health of the personnel, serving members of units of the Ministry of the Interior, and also condemned and imprisoned persons (see also in relation to art. 10 of the Covenant). Under the terms of this Act the use of firearms is prohibited in relation to women who are obviously pregnant, and persons who are clearly disabled and minors, except in cases of their armed resistance, or the carrying out of armed or group assault endangering life and health (art. 31).

83. Illegal deprivation of liberty, qualified as an act carried out in a manner endangering the life or health of the victim or accompanied by the causing of physical suffering to the victim, is subject to harsh punishment under the terms of the Criminal Code (art. 126). What is concerned is the creation of a real threat to life or the causing of an illness. Such an offence is treated as an act of (physical or mental) violence against the victim. The Criminal Code also considers other categories of offences that endanger life (arts. 127, 128, etc.).

84. The Federal programme for intensified struggle against crime in 1994-1995 contains extremely specific measures that are really capable of increasing the level of protection of the public. They include countrywide checks on the lawfulness of the possession of firearms by citizens; the devising of effective machinery for declaration of the earnings of public servants; the creation of specialized information services that should increase the effectiveness of searches for persons missing without trace; and the setting

up of funds for the rehabilitation of victims of crime and of persons released from places of detention. The pressing need to pursue this programme stems from the aspirations of forces opposed to reform to exploit the problem of crime in order to curtail democratic human rights and freedoms.

85. Under conditions of mass disturbances protection of the right to life acquires special significance in ensuring public safety and preventing the destabilization of the country and civil war. The events in Moscow on 3-4 October 1993, in which there was loss of life (147 people were killed), showed that democracy could be abused for the purpose of creating and using illegal armed bodies placing this right in mortal peril for the majority of the population, and calling into question the specific features of its defence.

86. Act No. 2487-1 of 11 March 1992 "Private Detective and Protection Services in the Russian Federation" governs the provision of services to private individuals and corporate bodies by enterprises licensed by offices of the Ministry of Internal Affairs, including those licensed to act as bodyguards. In Moscow alone 373 such enterprises and 450 security services have been created and 9,000 individual licences have been issued.

87. In the course of establishing the basic elements of a market economy Russia has been confronted by serious social consequences expressed in a drop in real incomes, a worsening of the environmental situation, high incidence of disease and a shortage of medicines, and an increasingly poor showing of other indicators. Some 35 per cent of the population has fallen below the poverty level, with incomes of less than the minimum living wage. This is creating a threat to the survival of a large part of the population, to their right to life, which the State is not in a position to ensure to the full extent. The basic information on this aspect and an analysis of it is to be found in the country report of the Russian Federation on the population prepared for the International Conference on Population and Development (Cairo, 5-13 September 1994), and will also be presented in the periodic report of Russia for the International Covenant on Economic, Social and Political Rights in 1994 and the country report of Russia to the World Social Summit in 1995.

88. Defence of the human right to life has come to be of particular importance in connection with the international and inter-ethnic disputes within the Russian Federation that have affected a number of regions of the country and neighbouring foreign countries. The armed conflict that developed in North Ossetia and Ingushetia obliged the Russian authorities to introduce a state of emergency in a number of localities and to renew it every two months since 2 November 1992. The provisional administration in this region has been entrusted with the exercise of the necessary powers in the manner laid down (see also in relation to art. 4 of the Covenant).

89. Work is continuing in pursuance of Presidential and Governmental Decrees to ensure the voluntary return of refugees from republics of the former USSR currently in North Ossetia to where they previously lived. We refer here to refugees from Georgia (about 29,000), Tajikistan (about 1,500), Armenia (more than 100) and Azerbaijan (about 100). The essential prerequisite for launching the repatriation operation must be elimination of the reasons why people were obliged to flee their countries (cessation of the conflict,

military operations and armed clashes, and the achievement of a peaceful settlement having regard to the humanitarian, economic and political aspects, and the establishment of conditions ensuring that repatriates can live a normal secure life). In accordance with international standards, repatriation must be voluntary and properly carried out and must exclude uncertainty over return.

90. A high proportion of the refugees in North Ossetia came from Georgia, where the situation is not conducive to their return. The situation with Tajik refugees also emphasizes the political nature of the repatriation process.

91. The furthering of defence of the right to life in the post-Soviet area in close interaction with the new independent States and with regard to the situation that has arisen is a sacred duty of the Russian State in its mission as peacemaker and mediator. When Russian troops are used as peace-keeping forces it is invariably with the agreement of and at the request of the parties to the dispute and on the basis of agreements that are not at variance with the principles of the Charter of the United Nations. In the majority of these disputes there is simply no alternative to the use of Russian peace-keeping forces to prevent bloodshed. Their collective actions are really helping to keep the peace in, for example, the Dniester region and South Ossetia.

92. With regard to Russian troops abroad, stationed, in particular, in Tajikistan, their legal status is also defined by a special Agreement of 25 May 1993, which provides that Tajikistan shall delegate the defence of the frontier of the State with Afghanistan and China within its territory to Russian frontier defence units for the transitional period in which it completes the formation of its own frontier defence units. This is fully in accord with the Treaty on Collective Security signed on 15 May 1992 in Tashkent by Russia, and the countries of Central Asia, including Tajikistan and Armenia.

93. Steps are being taken to return refugees to the Republic from Afghanistan (since mass repatriation of refugees was begun more than 30,000 people have returned to the country, and there are still some 35,000-45,000 remaining in Afghanistan).

94. Despite the fact that the use of armed forces abroad has certain adverse consequences for Russia, it is the only way to save lives.

Article 7

95. Freedom from torture, and from cruel, inhuman or degrading treatment or punishment is guaranteed in the Constitution (para. 2 of art. 21). The Criminal Code provides for punishment for actions that come under the heading of torture, and of cruel, inhuman or degrading treatment or punishment (arts. 171, 179, 183). Article 5 of the Act on "The Militia" prohibits the militia from "having recourse to degrading treatment". Similar rules are also to be found in the Corrective Labour Code of the Russian Federation (arts. 116, 117) and in other legislation.

96. Reference has already been made to the punishment for violence as expressed in the illegal deprivation of liberty. The Act of 29 April 1993 provides for increased liability for kidnapping, in conjunction with torture, and insulting or other acts of compulsion threatening the life or health of the victim (art. 125-1 of the Criminal Code). That, however, does not give any grounds for concluding that the situation in Russia is satisfactory as regards freedom from torture and other degrading treatment. We have here to take into account the Soviet traditions and ideology of criminal justice that are still in existence, the public sense of justice and other factors that lie outside the bounds of the law and are determined by economic conditions. The actual conditions under which prisoners are to be kept, as laid down in statutory instruments, come close to torture and degrading treatment. Appreciable changes to the legislation in force are made by the Act of 6 July 1993 "Amendments to the Criminal Code of the RSFSR and the Corrective Labour Code of the RSFSR", by an Act of 29 April 1993 with the same title, and by the Act of 21 July 1993 "Institutions and Bodies that Administer Punishment in the Form of Deprivation of Liberty". Thus, the Act of 21 July 1993 placed the staff of the correctional system under the obligation to notify condemned and imprisoned persons of the intention to use physical force, special means and weapons, having given them sufficient time to comply with the demands made upon them, and also to ensure that the least possible harm comes to them (art. 28). This is, on the whole, an appreciable step towards humanization of the Russian penitentiary system, one that brings it closer to the Standard Minimum Rules for the Treatment of Prisoners.

97. The lack of any real machinery for monitoring the system of correctional establishments is an important circumstance. The function of legal supervision is carried out in practice by the Procurator's Office, and that does not ensure a modern level of protection. The wave of strikes and mutinies that occurred in correctional establishments in the autumn of 1991, the data of independent public organizations, and also an extensive verification carried out in September 1991 by the Human Rights Committee of the Supreme Council of the Russian Federation all played a part in bringing about the appreciable amendments made to the Corrective Labour Code in 1992-1993, amendments concerning the system and conditions of detention, the aim of which was to ensure that prisoners should be free from torture and punishment. At the same time, there are grounds for the assertion that the statutory instruments and their application in prisons and other correctional establishments do not as yet ensure sufficient freedom from torture and inhuman or degrading treatment or punishment.

98. There has been a proliferation of communications from individuals and from public associations (the Moscow Helsinki Group, the Social Centre for the Promotion of the Reform of Criminal Justice, the Society Against the Death Penalty and Torture), as well as communications in the mass media, concerning the use of torture and other illegal methods of investigation to which there has not been any adequate response from the offices of the public procurator. The local authorities and local branches of public associations are still not making sufficient use of the means of protecting the rights of prisoners and detainees that are provided by the law. The Security Committee of the State Duma and the Presidential Human Rights Commission intend to work out additional measures to prevent cases of torture in the special prisons of bodies of the Ministry of the Interior.

99. Matters are similar in the other "closed system" - the armed forces - except that there are scarcely any provisions in the legislation and in military regulations that provide adequate guarantees for the rights of members of the armed services. Steps are being taken to democratize the army and humanize military relations. To that end, machinery is being established in the armed forces to make commanders (commanding officers) effectively responsible for implementation of the rights and freedoms of members of the armed forces, for the social consequences of their decisions, and for the participation of representatives of soldiers, sailors and airmen in ensuring the social and legal protection of members of the armed services and members of their families.

100. Posts are being created in military units for lawyers, sociologists and psychologists to study the morale and the psychological state of members of the armed services, and to give expert assistance to commanders in their work with their military personnel. Respect for the individual and for national dignity, and concern for the social and legal protection of members of the armed services are declared to be most important obligations of the commander in the general military regulations approved by the President in December 1993.

101. To deal with this problem special departments have been set up as part of the reorganization of the military command, to maintain links with public organizations, and to work with ex-servicemen and young people, and with the parents and families of service personnel. Close contacts have now been established and are being maintained, and working collaboration has been built up with almost all public organizations that are really assisting the armed forces of the Russian Federation in dealing with acute social problems.

102. Senior officials of the Ministry of Defence of the Russian Federation regularly meet representatives of the public, organize gatherings, round-table discussions and meetings on topical matters concerning the life and activity of the army and the navy, support and help to carry out charitable programmes and projects (the building of living quarters for members of the armed services; retraining for officers transferred to the reserve; medical care for service personnel in need of treatment; development of farm holdings etc.).

103. The processes of the democratic regeneration of society have made it necessary to seek new ways of ensuring respect for human dignity, strengthening the social and legal protection of service personnel, and preventing instances of their cruel, inhuman or degrading treatment.

104. The number of convictions for attitudes constituting breaches of regulations by superiors (commonly known as "bullying") fell by 24 per cent in 1993, which tallied with the official assessment of the result of measures taken to improve educational work in the forces. At the same time, the high level of injuries, suicides and desertion from the armed forces, and the data collected and collated by non-governmental organizations (first and foremost the Union of Soldiers' Mothers) are evidence that lack of respect for human dignity is prevalent in the army, and it may be assumed with some confidence that the predominant role is played by factors outside the law, even when there are laws regulating these relations. In 1993, 20 members of the army

and the navy died as a result of breaches of the regulations by superiors ("bullying"), some 2,000 cases under this heading were considered, and proceedings were taken against more than 2,500 service personnel.

105. The Constitution states (art. 21) "Nobody may be subjected without his or her voluntary consent to medical, scientific or other experiments." Guarantees for human rights in the sphere of medicine and of biomedical research are also to be found in various pieces of legislation, above all in the "Principles of the Legislation of the Russian Federation on Protection of the Health of Citizens", which governs the rights of the patient, the procedure for the use of new methods of prevention and treatment, medicines, immunobiological preparations and disinfectants, and the conduct of biomedical research, and the procedure for the taking of human organs and tissues for use in transplantation (arts. 30, 43 and 47 of the Principles). The following Acts were introduced in 1992: "Psychiatric Care and Guarantees of Civil Rights in its Provision"; "Transplantation of Human Organs and/or Tissues"; "The Donor System and Blood Transfusion"; and a draft act on the rights of patients is being prepared.

106. The principle of the voluntary nature of recourse to the medical services is of fundamental importance in this legislation. The exceptions to this principle in paragraph 4 of article 11, in paragraphs 4 and 5 of article 23 and in article 29 of the Act "Psychiatric Care and Guarantees of Civil Rights in its Provision" are occasioned first and foremost by the interests of the individual - of the patient, when a mental disorder creates a direct threat to the patient or to those with whom the patient is in contact, when the refusal to accept treatment will appreciably affect the patient's health if left without psychiatric care and when the mental disorder renders the patient helpless. The Act establishes a system of State, public and representative protection for the rights of the individual undergoing a mental examination, under observation when not in a hospital and when receiving hospital treatment. In the latter case the Act forbids the use of medication as a means of punishing a sufferer from a mental disorder, or in the interests of other individuals.

107. There are difficulties in ensuring these rights in practice, above all in connection with the inaccessibility to State control of a number of situations arising in the course of biomedical research, and with the need to use delicate means of ethical regulation. Information on this matter is to be found in a report on bioethics submitted by Russia to the Secretary-General at his request in April 1994.

108. These problems are actively discussed by the scientific community in Russia in the setting of the Russian National Committee for Bioethics and the Institute of the Human Being of the Russian Academy of Sciences.

Article 8

109. The constitutional basis of freedom from slavery and from being held in servitude is the assertion in the Constitution of the principle that human beings and human rights and freedoms are of the highest value (art. 2); the recognition that international standards in the sphere of human rights take

priority (para. 4 of art. 25, para. 1 of art. 17) and that human rights and freedoms are inalienable (para. 2 of art. 17); and the confirmation of the right to freedom and personal inviolability (para. 1 of art. 22).

110. Although the legislation of Russia does not contain any special rules devoted to freedom from slavery, the international standards in this respect are "an integral part of its legal system" (para. 4 of art. 15 of the Constitution). The reference here is, above all, to the obligations of Russia under the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. Proceeding from the illegality of violence against the person, Russian legislation protects women, guarding them against manifestations of survivals of local customs placing women in a dependent position, as expressed in particular in the kidnapping of the woman in order to contract a marriage with her (art. 233 of the Criminal Code). The penalties provided for illegal deprivation of liberty are also guarantees of freedom from slavery.

111. As regards such modern forms of slavery as the traffic in children and child pornography, there are no statistics in Russia on crimes in this area. Verification of what was said in press reports to be actual facts of international adoption of children on a commercial basis has failed to confirm that the practice of international adoption, which lacks the necessary legislative basis, although carried out under the supervision of the Russian authorities, is in the nature of a criminal offence. Examination of cases of the sale of children, concerning which there was the suspicion that the children were used as donors of organs or tissues for transplantation, also failed to provide grounds for the bringing of actions under the Act of 22 December 1992 "Transplantation of Human Organs and/or Tissues". During the period 1990-1992 prosecutions were brought against 1,191 persons accused of involving minors in criminal activity, drunkenness, begging as an occupation, prostitution and games of chance, and also for exploiting minors for the purpose of a parasitic existence.

112. An Act of 5 December 1991 deleted article 209 from the Criminal Code, the article providing liability for "vagrancy, begging as an occupation, or the leading of any other parasitic mode of life", which had been used to persecute dissidents.

113. No criminal liability for prostitution is established in Russian legislation, which lacks the concept of "prostitution as an occupation". However, the involvement of minors in prostitution as an occupation and the keeping of dens of vice and procuring are prosecutable under articles 210 and 226 of the Criminal Code. An under-aged girl who has become a prostitute is not criminally liable. Women who are practising prostitutes may be held to be administratively liable under article 164-2 of the Code on Administrative Offences and may be fined. There is no special department or body at the executive level in Russia responsible for combating prostitution. It is only when criminal offences occur that the facts of keeping dens of vice and enticing minors into prostitution are brought out. The lack of reliable statistics on the number of women engaged in prostitution also precludes assessment of the scale of this phenomenon.

114. Freedom from forced labour is guaranteed in the Constitution by a direct ban on such labour (para. 2 of art. 37), in addition to the proclamation in it of the right to work (para. 1 of art. 37). Having acknowledged its obligations under ILO Convention No. 29 (Convention concerning Forced or Compulsory Labour), Russia takes the topicality of its provisions as a starting point. Breaches of the labour legislation are prosecutable under the Criminal Code (art. 138).

115. Evidence that the labour of prisoners in correctional establishments is being humanized is provided by the granting to these establishments, under the terms of the Act of 21 July 1993 "Institutions and Bodies that Administer Punishment in the Form of Deprivation of Liberty", the right to employ prisoners on work having regard to their fitness for work and, where possible, their qualification (arts. 14 and 15) in the context of demands for monitoring the activity of the corrective labour system (art. 38). To this may be added the scrapping, under the terms of the same Act, of the legislation on the working rehabilitation of drug addicts and chronic alcoholics. One important feature of this Act is the recognition that "the activity of the corrective labour system shall be carried out on the basis of the principles of legality, humanism and respect for human rights" (art. 1).

116. The interests of the correction of prisoners are not subordinated to the aim of profiting from convict labour. The practice that existed for many decades of retaining 50 per cent of the earnings of prisoners for the upkeep of corrective labour establishments has been scrapped. The convicted person is offered the possibility of individual work.

Article 9

117. The right to liberty and security of person is guaranteed in article 22 of the Constitution:

> "1. Everyone shall have the right to liberty and security of person.
>
> "2. Arrest, taking into custody and holding in custody shall be permitted only by judicial decision. Without a judicial decision nobody may be detained for a period of more than 48 hours."

118. Under article 5 of the Act "The Militia" ("Activity of the militia and human rights") no restriction may be placed by the militia on the rights and liberties of citizens except on grounds and in the manner directly provided by the law.

119. Article 11 of the Code of Criminal Procedure makes provision for the possibility of arrest with the sanction of a procurator. However, arrest on the basis of a judicial decision is increasingly being made the practice. In 1993 some 40,000 accused persons whom the investigators had left at liberty were taken into custody by judicial decision; there were 53,874 appeals on the legality of arrest and the grounds for arrest. Nevertheless, there are still instances of failure to comply with paragraph 2 of article 9 of the Covenant on promptly informing the arrested person of any charges against him.

120. It may be said in this instance that Russian legislation and legal practice do not completely coincide with paragraph 3 of article 9 of the Covenant, which requires that anyone arrested or detained shall be brought before a judge or other officer authorized by law to exercise judicial power. This procedure - one of the oldest guarantees against arbitrary action by the authorities - reflected in paragraph 2 of article 22 of the Constitution, is still accepted with difficulty in traditional Russian legal practice, which is based on the inadmissibility of acquainting a detained person with the intention of the inquiry while the court examination is in progress. The view is taken in Russia that no supervision on the part of the Procurator's Office can be regarded as fully substituting for court supervision without recognizing the function of the court to be one of the branches of the executive power, which would flatly contradict the Constitution of the Russian Federation and the principle of the separation of powers.

121. Some amendments made in 1992 to criminal procedural law extended the sphere of judicial control and aligned the criminal trial more closely with the principles of adversarial procedure. In particular, the Act of the Russian Federation of 23 May 1992 "On Amendments and Additions to the Code of Criminal Procedure of the RSFSR" introduced the procedure of appeal and judicial verification of the legality of and grounds for holding in custody as a preventive restriction, and extended the right of defence. The same Act resolved another very important matter to do with supervision of extension of the period of custody. The old, extrajudicial, extension procedure has been retained, but at the same time the arrested person has been given the right to appeal against the decision to the court, and the judge has been placed under the obligation to hear the appeal within three days from the time of receiving the necessary evidence.

122. Under this Act (paras. 1 and 2 of art. 220 of the Code of Criminal Procedure in the wording contained in the Act of 23 May 1992) appeal against the use of holding in custody as a preventive restriction by an investigating body, official investigator or procurator, and equally against extension of the period of holding in custody shall be addressed to the court by the person being held in custody, the defence lawyer or legal representative either directly or through the person conducting the investigation, the official investigator or the procurator. The person conducting the investigation, the official investigator and the procurator are obliged to forward the appeal to the court within 24 hours, along with evidence in support of the legality of and the grounds for holding in custody as a measure of preventive restriction or of extending the period of custody, also giving their clarifications, should that be necessary. Should the appeal have been forwarded through the administration of the place of custody, the procurator is under the obligation to send the court the evidence and clarifications referred to above within 24 hours of the time of receipt of notification from the place where the person is being kept in custody that an appeal has been lodged by him.

123. The Act specifies that until such time as the appeal has been heard the lodging of the appeal does not suspend the effect of the custody order as a measure of preventive restriction and does not entail release of the person in custody unless it be found necessary by the person conducting the

investigation, the official investigator or the procurator. The Act also establishes the procedure for judicial verification of the legality of and grounds for arrest or for extension of the period of custody.

124. Judicial verification of the legality of and grounds for the use of custody as a measure of preventive restriction and of the legality of and grounds for extension of the period of custody shall be carried out by the court for the place where the person in custody is being held within a period of no more than three days from the day of receipt of the necessary evidence. Judicial verification of the legality of and the grounds for arrest or extension of the period of custody in the absence of the person held in custody shall be permitted in exceptional cases when that individual petitions for the appeal to be heard in his absence or declines on his own initiative to take part in the proceedings.

125. At the court hearing the judge shall explain to those appearing their rights and duties. The applicant, if present at the hearing of the appeal, shall give the grounds for it after the other persons have been heard.

126. As a result of the judicial verification the judge shall either direct that the measure of preventive restriction taking the form of holding in custody be quashed and the person in custody be released, or that the appeal has been unsuccessful. Should evidence establishing the legality of and the grounds for holding in custody not have been presented at the sitting, the judge shall direct that this measure of preventive restriction be quashed and that the person be released from custody. Concurrently with directing that the measure of preventive restriction taking the form of holding in custody be quashed, the judge is entitled to choose any other measure of preventive restriction provided by the law.

127. Should a decision be taken to release a person from custody, a copy of the decision is sent to the procurator for prompt execution. Should the person in custody be present at the sitting, the release shall be carried out without delay in the courtroom. Further taking of the same individual into custody over the same case as a measure of preventive restriction after quashing of the original custody by the judge is possible only should new circumstances be discovered that make it essential that the individual be held in custody. The further taking into custody as a measure of preventive restriction may be appealed against in a court on general grounds.

128. Paragraph 5 of article 9 of the Covenant provides for the right of the individual to be compensated for unlawful arrest or detention. Similar general rules are to be found in articles 52 and 53 of the Constitution. This right is also guaranteed by existing rules contained in the Decree of the Presidium of the Supreme Soviet of the USSR of 18 May 1981 "Compensation for Damage Caused to a Citizen by Illegal Acts of State and Public Organizations, and by Officials in the Execution of Their Official Duties". The Criminal Code of the Russian Federation contains an article 178 that provides liability for patently illegal arrest or detention.

129. Paragraph 4 of article 9 of the Covenant contains a definition of the right for the case to be heard by an independent and impartial tribunal. All the rights enumerated are guaranteed in greater or lesser detail in the

Constitution (para. 1 of art. 63, para. 1 of art. 65, para. 1 of art. 67) and no formal contradictions have been found at the constitutional level. This is explicable in part by the brevity of the rule in the Covenant, which does not detail, for example, what is meant by the concept of "an independent and impartial tribunal".

130. On the other hand, the legislation on the Judiciary and on the Procurator's Office, and procedural legislation and practice do not coincide with the Constitution in all respects. The situation is to some extent paradoxical in that it is not only the legislation adopted during the Soviet period, but also the most recent Russian legislation that is at variance with the Constitution, the international standards and the Concept of Judicial Reform adopted by the parliament. We may instance as an example the Act of 17 January 1992 entitled "The Procurator's Office", the aim of which is primarily to strengthen the existing system of the Russian Procurator's Office and to retain the traditional Soviet model of legal procedure.

131. Article 19 of the Constitution establishes the equality of the parties before the law and the court. In accordance with article 429 of the Code of Criminal Procedure the preliminary hearing and the jury procedure, which has not yet become universal, are based on the adversarial principle. Meanwhile, criminal trials in Russia are not adversarial in other respects, but are a specific Soviet variant of the investigatory trial, the overriding characteristic of which is that the status and position of the court tends to come down on the side of the prosecution. The participation of the procurator as public prosecutor in court hearings is not obligatory (para. 1 of art. 31 of the Act "The Procurator's Office"), which may imply the possibility that the function of the prosecution is transferred to the court.

132. The procedural legislation in force also assures this investigatory type of trial. Thus, article 3 of the Code of Criminal Procedure establishes the obligation on the court to institute criminal proceedings when the attributes of a crime are discovered. In accordance with paragraph 4 of article 248 of that Code, refusal of the procurator to prosecute does not relieve the court of the duty of continuing an investigation.

133. The principle of the equality of the parties before the court is incompatible with the Act "The Procurator's Office", which assures the advantage of the prosecution over the defence. Under article 32 the procurator is entitled to protest against enforcement of the decision, verdict, finding or order of the court. In that case it is compulsory for the procurator's protest to be heard, whereas an appeal by the defence against enforcement of the decision does not entail any compulsory juridical consequences.

134. The need for additional efforts to make the adversarial principle more effective in the practice of Russian criminal justice is also apparent from the court statistics: there are very few acquittals (less than 1 per cent). The requirement for a fair examination of the case by an independent and impartial court and for ensuring the presumption of innocence implies strict demands on the authenticity of the information on which the legal decision is based, and on reliability and irreproachable procedure. Legal practice, however, follows articles 342 and 345 of the Code of Criminal Procedure of the

Russian Federation, which provides for quashing of the decision of the court only in the case of "significant breaches of the criminal procedural law". The gradual erosion of the distinction between the use made in trials of information obtained in a procedural and a non-procedural manner is even more adverse. Such a conclusion may be drawn from an analysis of article 10 of the Act of 13 March 1992 "Operational Enquiries in the Russian Federation". The Act states that one of the possible ways of using the results of an operational investigation is "as proof in criminal cases after their verification in accordance with the criminal procedural legislation". Thus the court merely verifies this information, checks it and may use it as proof, although it was obtained in a non-procedural way. Once again this is typical of an inquisitorial, investigative trial, but by no means of an adversarial trial. Article 10 of the same Act may "set off" an entire system of demands for information that is accepted as proof and may provide the basis for the decision of a court. Although there has not as yet been any evaluation of legal practice in this respect, the potential threat of this rule is evident.

135. Particular note should be taken of one further aspect that is specific to the "Soviet" system of jurisdiction and that appreciably curtails the right of citizens to judicial protection for their rights - the disproportionately large place occupied by the Procurator's Office in the system of bodies providing justice and ensuring civil rights. Under the terms of the Act on the Procurator's Office, it is responsible for the higher supervision of punctilious and uniform carrying out of the laws in operation in the Russian Federation, including the right to appeal against the enforcement of court decisions and judgements (arts. 4 and 5 of the Act on the Procurator's Office). Not only are these functions not written into the democratic legal system, but they flatly contradict one of the basic principles of the constitutional order embodied in article 10 of the Constitution - the separation of powers.

136. The supervisory functions of the Procurator's Office replace the judicial verification of the legality of and grounds for the actions of the militia and of the security bodies, including their actions on such "thorny" questions as interference in private life, the confidentiality of correspondence and telephone conversations, etc. The sphere of judicial power is being restricted and its place is being taken by the Procurator's Office, i.e. by a department that is, in practice, neither legislative nor executive. This is especially impermissible in that, while exercising supervision over the legality of operational inquiries, investigation and preliminary examination, the Procurator's Office also appears as the party supporting the State prosecution in the court hearing. This obviously inclines the entire system of justice towards the prosecution and waters down even those guarantees of civil rights that are provided by the Code of Criminal Procedure of the Russian Federation.

137. A reassessment is currently being made in Russia of the existing system, under which supervision by the Procurator's Office is combined with its function of prosecution, from the point of view of the need to ensure the right to a fair hearing of the case by an independent and impartial court. In that context, we have adopted the Act of 23 May 1992, referred to above, the Act "Amendments and Additions to the Law of the RSFSR 'The Judicial System of the RSFSR, the Code of Criminal Procedure and the Code of Civil Procedure of

the RSFSR'" of 29 May 1992, and the Act "The Status of Judges in the Russian Federation" of 26 June 1992. The first of these Acts amended article 223 of the Code of Criminal Procedure concerning, for example, the right of the accused to require that additional witnesses be called and to demand other evidence. These applications are now subject to satisfaction in all cases, which is in line with paragraph 3 of article 14 of the Covenant. The Act adopted on "The Status of Judges" is of exceptional importance, in that it constitutes a serious step in the direction of ensuring the independence of judges. However, serious problems concerning qualified candidates have to be tackled in the application of the Act, as does the fact that its most progressive part is currently at variance with the Constitution, the changes in which in recent years have been least in its chapter 7 "Judicial Power".

138. Article 1 of the Act "The Militia" defines the militia as a system of State bodies of the executive power, the primary purpose of which is to protect the life, health, rights and freedoms of citizens against criminal and other illegal infringements. In addition, it regulates the duties and powers of members of the militia, including the grounds and procedure for the use of force, special means and firearms (arts. 12-15).

139. The activity of the militia is monitored both internally and by the local administrations and public bodies. In addition, the Procurator General of Russia and the procurators subordinate to him supervise the legality of the activity of the militia.

140. In accordance with article 39 of the Act "The Militia", a citizen who considers that the action or the inactivity of a member of the militia has infringed his rights, freedoms and legal interests, is entitled to complain to superior bodies, or to an official of the militia, a procurator or a court. Members of the militia are legally liable for illegal acts.

141. The Act of 27 April 1993 "Legal Proceedings Against Actions and Decisions that Infringe Civil Rights and Freedoms" provides every individual with a legal guarantee of reliable protection against unlawful acts by bodies of the Ministry of the Interior and their officials, especially when they use measures of coercion. Should bodies of the Ministry of the Interior make illegal or groundless use of measures of an administrative and coercive nature, persons whose rights or interests have been infringed are entitled to protest against these measures to a court. The latter, when it has established the illegality or the groundlessness of these actions, shall restore the infringed rights of the citizens, shall take steps to ensure that such infringements do not occur again and, where necessary, shall award damages against the bodies of the Ministry of the Interior to compensate the victims for the material and moral damage suffered (art. 447 of the Civil Code of the RSFSR).

142. In furtherance of the basic provisions of the International Covenant on Civil and Political Rights an Act "Amendments and Additions to the Code of Criminal Procedure of the RSFSR" was adopted on 23 May 1992, a number of whose novels are aimed at the protection of the rights and freedoms of the individual in criminal justice. Thus, paragraph 2 of article 11 of the Code of Criminal Procedure of the RSFSR stipulates that an arrested person has the right to appeal and to seek legal verification of the legality of his being

held in custody. Should the judge rule, arising from the legal verification, that the person be released from custody, that ruling shall be complied with promptly (see the section of the report relating to art. 26 of the Covenant for greater detail).

143. In tackling questions concerned with improving the system for legal appeal against the actions of State bodies, the Plenum of the Supreme Court adopted a ruling on 27 April 1993 "The Practice of Legal Verification of the Legality of and Grounds for Arrest and Extension of the Period of Custody" (arts. 220-1 and 220-2 of the Code of Criminal Procedure). The observance of legality in this sphere falls within the purview of parliament. Decree No. 101-1 GD of the State Duma of the Federal Assembly of 26 April 1994 approved the "Statute of the Commission of the State Duma for verification of infringements of human rights in relation to persons suspected of and accused of having committed a crime who are held on remand in the investigating prisons of the Ministry of the Interior of the Russian Federation". Parliamentary time has been allocated for examination of the legislation in force in this respect from the point of view of the correspondence of the Constitution to international standards.

Article 10

144. There are at the present time nearly 600,000 convicts in colonies in Russia and more than 233,600 prisoners and persons under investigation in ordinary prisons and special investigation prisons. Guarantees for the rights of persons deprived of their liberty to be treated with humanity and respect for their human dignity is embodied in a general form in various of the provisions of the Constitution concerning human and civil rights and freedoms (chap. 2), and also in the Code of Criminal Procedure and the Act of 21 July 1993 "Institutions and Bodies that Administer Punishment in the Form of Deprivation of Liberty", which operate "on the basis of the principles of legality, humanism and respect for human rights" (art. 1).

145. In the context of the requirements of the Standard Minimum Rules for the Treatment of Prisoners, the Act of 12 June 1992 "Amendments and Additions to the Corrective Labour Code of the RSFSR, the Criminal Code of the RSFSR and the Code of Criminal Procedure of the RSFSR" made provision for a wide range of measures aimed at democratization of the country's penitentiary system, and guarantees for the civil rights of prisoners. These changes determine the general trend of reform of the penitentiary system, the transition from harsh punitive measures in the treatment of prisoners to broad stimulation of law-abiding behaviour. The provisions of the Code of Criminal Procedure on suspension of the serving of the sentence have been amended in accordance with this Act (art. 361 of the Code of Criminal Procedure).

146. The serving of a sentence of deprivation of liberty or of corrective labour may be suspended under the following conditions: serious illness of the convicted person - until his or her recovery; if a convicted woman is pregnant or has young children - until the youngest child is three years old; and also suspension for a period specified by the court should prompt serving of the sentence be liable to occasion distressing consequences for the convicted person or his family.

147. In accordance with article 10 of the Covenant, the Act provides for measures to humanize and differentiate the regime under which prisoners are kept, and for observance of fundamental human rights and the bringing of prisoners' conditions closer to the international standards.

148. New clauses have been inserted in the Corrective Labour Code governing the guaranteeing of freedom of conscience to convicted persons and their right to personal safety, the guaranteeing of which is made the responsibility of the commandant of the corrective-labour establishment. A special regime may be instituted in places of detention to avert a direct threat to the life and health of the convicted persons (art. 23-1 of the Corrective Labour Code of the RSFSR). A line has been taken on the differentiation of conditions - local preventive sections in which persistent disturbers of order, leaders of the criminal fraternity, will be isolated, are being established in each colony.

149. In connection with the abolition of the regime of stricter conditions (6.7.1993), prisoners sentenced to that regime are now being sent as a rule to places of detention with a general (i.e. less strict) regime.

150. In connection with humanization of the conditions of detention in the context of implementation of article 10 of the Covenant, convicted persons have begun to have closer links with their relatives and acquaintances through telephone conversations, restrictions on correspondence have been lifted, detainees may receive works of literature, other publications and money orders by post without restriction, and the number of long and short visits has been increased, as has the number of parcels, remittances and packets of printed papers (see also in relation to arts. 12 and 18 of the Covenant). Convicted persons may receive foodstuffs and basic necessities from their relatives practically on a monthly basis. Greater opportunities have been provided for additional purchases of foodstuffs and other goods in the shops of corrective labour establishments. Detainees may no longer be punished, as was formerly the case, by being put on reduced rations or deprived of additional food for breaches of the regime under which the sentence is served and for a negligent attitude towards work. Punishments taking the form of loss of privileges (visits, parcels, remittances) and shaving of the head have been abolished.

151. A number of provisions are aimed at protecting the economic interests of convicts and at their social re-education. It is proposed to use convict labour in enterprises in various forms of ownership (see also in relation to art. 8 of the Covenant). Annual paid leave, with or without leaving the confines of corrective-labour establishments, has been introduced for convicts (art. 38 of the CLC of the RSFSR), for example, leave in preventive health-care facilities being established in colonies.

152. A social security system has been introduced for a number of categories of convicts (art. 42 of the CLC of the RSFSR). Convicts working for the first time have received the right to have their work performed while serving their sentence included in the general qualifying period for receipt of a pension.

153. The rights and privileges of convicted women (of whom there are 21,600) have been considerably extended, first and foremost those of pregnant women and women with young children. They are being provided with better living conditions and increased rations have been established for them.

154. Since 1992, the sentences of convicted pregnant women and women with children less than three years old have been deferred, except for women convicted of serious offences and given a sentence of more than five years. Women who have children in the children's homes of colonies are entitled to a maintenance grant for the children, and those who have children less than three years old are permitted to live outside the colony. Provision is being made for women convicts to wear their own clothing.

155. Since the age of criminal responsibility in Russia is 14, juvenile offenders below that age do not serve sentences in penitentiary establishments. Accused juveniles in special investigation prisons and convicted juveniles in corrective-labour colonies (of which there are 59 in which 19,100 persons are serving sentences) are kept separate from adults. Legislative provision has been made for better conditions for them than for adults. Government Decrees No. 409 of 20 June 1992 and No. 610 of 21 August 1992 give them improved rations. Education is the main aspect of work with juveniles. Each colony has a general school and an industrial trade school. Practically all juvenile offenders have the possibility of increasing their level of general education and of acquiring an occupation or trade on release. It is common practice for juvenile offenders to be allowed to go out of the colony to attend mass cultural and sports activities.

156. For the first time the Act places the staff of corrective-labour establishments under the obligation to observe professional ethics, to be humane in their attitude towards convicts and not to permit cruel, inhuman or degrading treatment.

157. The actual conditions under which persons deprived of liberty are kept are, however, a cause of concern to the Russian authorities, who are unable by virtue of economic factors to effect a radical improvement in the situation in places of detention. It is acknowledged to be impossible in the foreseeable future to comply with the recommendation of article 9 of the Standard Minimum Rules for the Treatment of Prisoners that each prisoner shall have a separate room. Most unfavourable conditions have arisen in the special investigation prisons of Russia. The rise in crime has led to considerable overcrowding of the existing establishments, which have accommodation for 167,800 and actually house 234,300. Each person has less than one square metre of space instead of the entitlement of 2.5 m^2; rooms intended to hold 20 not yet convicted people in fact hold 60 or more, while many are in barrack rooms housing 100. The accommodation of convicts in corrective-labour colonies is considerably better - the entitlement is 2 m^2, but each person has, on average, 2.75 m^2. However, in accordance with the space requirements of the regulations in force, 20 corrective-labour colonies of the Ministry of the Interior and the Internal Affairs Department of Russia lack space, on average, for 450 of their inmates (colonies in the Altai, Stavropol, Krasnodar and Krasnoyarsk krais, the Irkutsk, Rostov and Samara oblasts, Tatarstan, Yakutia and others). The corrective labour colonies lack canteens and piped water and drainage systems. Two thirds of the 177 special investigation prisons and ordinary prisons were

built in the seventeenth to nineteenth centuries and are in an extremely run-down condition. Inflation and declining production have had the effect that some 200,000 convicts have remained without work, and there is a shortage of fuel and finance. Establishments of the correctional system are experiencing great difficulties in providing for the feeding, medical treatment and living conditions of arrested persons and convicts. The cost of foodstuffs, medicaments and household goods is continuously increasing. As a result most subdivisions are chronically indebted to their suppliers, and are unable to carry out repairs and conversions promptly and to undertake new building work.

158. The relaxation of price controls has greatly restricted the scope for maintaining the extremely outdated fabric of the general schools in establishments for juvenile offenders at its former level. No resources are being allocated for the purchase of textbooks, teaching aids and equipment. There are on average 4-5 textbooks for every 20 pupils, and scarcely any teaching aids for additional classes.

159. The acute situation regarding prisons and colonies is made worse by the make-up of the convict population (one in four has been convicted for premeditated murder or grievous bodily harm; one in five for robbery with violence, theft, or rape; more than 60 per cent have more than one conviction; and 60,000 persons are acknowledged to be dangerous recidivists). Consequently, the Russian penitentiary system is passing through one of the most difficult periods of its existence. All the manifestations of crisis that have built up in Russian society are manifested in a more acute and concentrated form in the functioning of the system.

160. The socio-political and economic conditions currently taking shape in Russia require radical changes in criminal and correctional policy, and the adoption of new legislation. The need to reform the criminal-punishment system is also dictated by the fundamental changes taking place in the country's official, economic and public structures. Having regard to that fact, the Government adopted a Decree on the provision of greater resources for special investigation prisons and ordinary prisons, the carrying out of which will depend on the appropriate financing.

161. Steps are being taken to improve the conditions of persons remanded in custody in special-investigation prisons (SIZO) and of convicts in prisons and corrective-labour establishments. New establishments are being built and existing ones converted to the extent permitted by the resources allocated by the Russian Ministry of Finance. However, these resources are clearly inadequate for a real solution of the problem of housing prisoners remanded in custody under investigation.

162. In 1994 the Russian Ministry of Finance allocated funds to cover 25 per cent of the expenditure envisaged by Decree No. 1355 of the Russian Government.

163. Work is in hand on the conversion of 35 unpromising alcoholism treatment centres where treatment was combined with work and corrective-labour colonies into special investigation (remand) prisons. That will provide an additional

23,400 places. Forty such centres will be re-equipped as corrective-labour colonies, and four centres and one military town as training-labour colonies.

164. A Federal programme for the building and conversion of special investigation prisons and general prisons down to the year 2000 is now being prepared; it is proposed to convert 134 existing establishments and to build 60 new special investigation prisons. When this programme is carried out it will increase the available living space by an additional 50-60,000 places.

165. An amnesty has been proclaimed in the interests of a humane attitude towards persons sentenced for crimes that do not constitute a serious threat to society, and also in connection with the adoption of the new Constitution. According to provisional estimates, some 20,000 of the least dangerous criminals are being released from their places of detention. First and foremost, the amnesty will benefit disabled persons in disability categories 1 and 2, persons of pensionable age who took part in the defence of the Motherland, women, juveniles, and persons sentenced to up to three years of deprivation of liberty who have served at least one third of their sentence.

166. In addition, the period of detention of 25,000 convicts has been shortened.

167. In the face of all the existing difficulties, the administrations of places of detention are making every effort to ensure that domestic goods, foodstuffs and medical care are provided at the levels laid down.

168. The Russian Ministry of Internal Affairs continuously monitors compliance with the system for the keeping of convicts, and also of suspects and persons accused of having committed crimes. Checks are regularly carried out, in the course of which visits are made by members of the Ministry's staff accompanied by representatives of executive and legislative bodies. A thorough investigation must be conducted of any evidence of breaches of the law or of inhuman treatment of offenders, and guilty persons must be strictly disciplined or prosecuted. Thus, in the course of 1993 branches of the Procurator's Office acknowledged that there had been irregular use of special means against convicts (rubber truncheons, handcuffs, tear gas) in 23 cases in corrective-labour colonies and in one case in a training-labour colony. Strict disciplinary measures were taken against the guilty persons. Such an assessment is not, however, accepted as adequate in parliamentary circles and by public opinion. The need to take urgent measures to rectify the situation is indicated by a great deal of testimony that has appeared in the press.

Article 11

169. Russian legislation does not contain any provision on deprivation of liberty for a person who is unable to fulfil a contractual obligation. The impermissibility of such deprivation of freedom is reflected in the Civil Code.

Article 12

170. The right to liberty of movement in the country and the freedom to choose the place of residence within it are reflected in paragraph 1 of article 27 of the Constitution.

171. An Act "The Right of Citizens of the Russian Federation to Liberty of Movement and Choice of the Place of Temporary or Permanent Residence Within the Russian Federation", which came into force on 1 October 1993, in fact marked the beginning of the gradual scrapping of the notorious pass system. The aim of this Act is to do away with the system of prohibition and permission and to establish a free system requiring no more than that Russian citizens be registered. In accordance with article 2 of the Act, any restriction on the right of Russian citizens to liberty of movement and to choice of the place of temporary or permanent residence within Russia is permitted only on the basis of the law. Under article 9 of the Act this right may be restricted in the frontier zone, in closed military towns, in closed administrative areas, in environmental disaster zones, and in some territories and built-up areas where special conditions and a regime of life and economic activity have been introduced in the case of risk of the spread of communicable and highly prevalent non-communicable diseases and poisoning, and also in territories where a state of emergency or of war has been declared. Under article 2 of the same Act, the right of movement is also extended to foreigners and stateless persons in accordance with the Constitution and legislation of Russia and the international treaties to which Russia is a party.

172. The real implementation of the Act involves bringing the legislation and statutory instruments into line with the new requirements. Difficulties are being encountered in this process in connection with the claims of a number of the members of the Federation to self-regulation in this area. Thus, the Mayor of Moscow adopted Ordinance No. 637 of 5 November 1993 "Introduction of a Special Order for Residence in the City of Moscow - the Capital of the Russian Federation of Citizens Permanently Resident Outside Russia" and Schedules to it of 5 November 1993 (No. 651). The leader of the administration of Amur oblast adopted Decree No. 534 of 30 November 1993 "Confirmation of the Rules for Entry into, Movement within and Temporary Residence in Amur Oblast" Such special regimes, adopted in the absence of Federal implementation of the new Act and in the face of increased criminality in the capital and in the regions will be the subject of parliamentary examination to establish their conformity to Federal law.

173. Provision is made in paragraph 2 of article 27 of the Constitution for the right of any individual to leave the country.

174. An Act "Procedure for Citizens of the Russian Federation to Travel Outside the Limits of the Russian Federation and to Enter the Territory of the Russian Federation" was given a first reading by the Supreme Council of the Russian Federation on 8 June 1993, further worked on and sent for a second reading. Pending the adoption of that Act, the Act of 20 May 1991 of the former USSR "Procedure for Citizens of the USSR to Leave the USSR and to Enter the USSR", which meets the requirements of the International Covenant on Civil and Political Rights, has been brought temporarily into force from

1 January 1993. As a result, the right of every citizen of Russia to depart freely from the Russian Federation and to return to its territory without hindrance has been guaranteed at the legislative level.

175. In accordance with the Decree of the Supreme Council of the Russian Federation of 22 December 1992 and Government Decree No. 73 of 28 January 1993, and also of Order No. 157 dated 17 February 1993 of the Ministry of Internal Affairs, which approved "Temporary Regulations for the Preparation and Issuing of Passports to Citizens of the Russian Federation", offices of the Ministry of Internal Affairs began on 1 March 1993 to issue passports for travel abroad to all citizens and organizations requesting them, irrespective of the purpose of the foreign travel and the country of departure. These passports, which do not have written permits, confer the right to cross the State boundary of the former USSR repeatedly during the five years for which they are valid. Consequently, a fundamental human right - the right to travel freely outside one's own country and to return to its territory without hindrance - has been realized for the first time in Russia.

176. The situation that has now developed is one in which it is often easier and quicker for a Russian citizen to obtain a Russian passport for foreign travel than to obtain the entry and transit visas of foreign States. There is dissatisfaction among citizens over the large queues of callers at the consular offices of foreign embassies and the high charges for the issuing of entry and transit visas. As regards difficulties of an internal nature, the high cost of air tickets and railway tickets makes foreign trips difficult.

177. Whereas 1.5 million passports were issued in the course of 1992, including 103,700 passports for permanent residence abroad, the number issued in 1993 had already reached 3 million for temporary trips abroad and 114,000 for permanent residence in foreign countries. The time needed for the preparation of a passport has been appreciably reduced: it now takes up to one month to obtain a passport for temporary trips abroad and up to three months for an exit permit for permanent residence abroad.

178. Less than 1 per cent of passport applications are rejected. These are cases of temporary withholding when the applicant is known to possess knowledge that is a State secret, and also of withholding under a court order. Decree No. 238 dated 19 March 1994 of the Council of Ministers and the Government of the Russian Federation set up an interdepartmental commission to consider appeals from citizens of the Russian Federation against the refusal to issue them with passports for foreign travel and against temporary restrictions on their foreign travel. The Commission considers individual submissions from Russian citizens and takes decisions on their right freely to leave the country in keeping with the interests of the State in the sphere of the protection of information that is a State secret. Under paragraph 6 of the Statute of the Commission approved by Government Decree No. 762 of 11 August 1993, its decisions on the issuing of a passport for foreign travel to a citizen of Russia must be complied with within one month unless a different period is specified in the decision itself. Breaches of these time limits are regarded by the Commission as an infringement of the rights and lawful interests of citizens. Over the period for which the Commission has been in operation (since 1 June 1993) it has held 12 working sessions at which

129 cases of persons whose applications had been rejected were considered, and a decision to lift the restriction on departure was reached in relation to the overwhelming majority. The Commission is guided in its work by Russian legislation, including the Act "State Secrets", the Act "Security", the Act "Property in the RSFSR" (art. 2), and "Principles of Civil Legislation" (art. 151).

179. The Commission has recently received many submissions from persons (the so-called "poor relations"), who have undischarged obligations of a civil and legal nature, mainly maintenance orders, but also property claims, problems with relatives over apartments and so on. Under the legislation in force, cases of this kind must be decided exclusively in the manner legally laid down and are not within the competence of the Commission.

180. The USSR Act "Procedure for Citizens of the USSR to Leave the USSR and to Enter the USSR" provides grounds for temporary restrictions on the right to leave the country (art. 7). Chapter 24-1 of the Code of Civil Procedure (in the wording given by the Act of the Russian Federation of 28 April 1993) defines the procedure for appeals against the actions of State bodies and officials that infringe the right of citizens to travel freely outside the Russian Federation and to return to the country without hindrance. The legislation in force (art. 46 of the Constitution, and the Act of the Russian Federation of 27 April 1993 "Legal Proceedings Against Actions and Decisions that Infringe Civil Rights and Freedoms") makes direct provision for legal appeal against the decisions of the bodies concerned (including the Commission) when they refuse to allow Russian citizens to travel abroad. Appeals of this kind are considered by the courts within 10 days of their being lodged (para. 3 of art. 99 of the Code of Civil Procedure). The special procedure for their consideration is governed by chapter 24 of the Code of Civil Procedure "Appeals Against the Actions of State Bodies, Public Organizations and Officials that Infringe Civil Rights and Freedoms". There are therefore no procedural obstacles to examination of cases in this category (or of the accompanying disputes over property and other matters).

181. The right of entry to one's own country is guaranteed by the Constitution, which provides the right of citizens to return to Russia without hindrance (para. 2 of art. 27). The above-mentioned Act on entry and departure procedure governs border-crossing conditions (art. 3). As regards forced migrants, should the matter not be one of the arrival of a citizen of Russia in its territory or of an emergency mass arrival, the person wishing to be recognized as a forced migrant shall have the right, before leaving his place of permanent residence, to apply for the recognition of such status as laid down in article 2 of the Act "Forced Migrants". The Agreement on Assistance to Refugees and Forced Migrants of 24 September 1993, worked out within the framework of the CIS, makes provision for a range of measures to facilitate their entry into the territory of the parties. The desire to facilitate the unhindered entry of migrants into Russia is reflected in the agreements with Estonia and Latvia. No instances of denial of the right to enter one's own country have been recorded in Russia. Persons who have been deprived of citizenship or who lost it during the Soviet period without having freely concurred in its loss, have their Russian citizenship restored in accordance with the Act "Citizenship of the RSFSR" (as amended and supplemented on 17 June 1993).

182. In the context of the policy being pursued by Russia of protection and support for ethnic Russians who have found themselves abroad as a result of the collapse of the USSR, great significance attaches to article 62 of the Constitution which makes provision for a Russian citizen to have dual citizenship. Such a guarantee will ensure the possibility of the unhindered return of the citizen to his ethnic Motherland, and will be a psychological comfort to many people who attach importance to confirmation of their legal tie with Russia, while not rejecting their citizenship of the country in which they live. The acknowledgement of dual citizenship with each individual country naturally requires bilateral regulation. Agreement on this score has as yet been reached only with Turkmenistan. At the same time, under the "Citizenship" Act (subpara. 3 (a) of art. 19) any person who has a USSR passport may claim Russian citizenship and, consequently, the right to unhindered entry into Russia.

183. An Agreement on travel without visa by citizens of the Commonwealth of Independent States within the territory of its members was signed on 9 October 1993.

184. The aims of regulating the cross-border movement of people in connection with the giving of effect to the right to work are served by the legislation of Russia in the sphere of external labour migration and practical activity for its implementation. The basis of regulation in this sphere is Act No. 1031-1 of 19 April 1991 "Employment of the Population in the RSFSR", with the amendments of 15 July 1992, Government Decree No. 539 of 8 June 1993, Regulations on Licensing Procedure and Conditions of Licensing Activity Connected with the Employment of Russian Citizens Abroad and Regulations on the Enlistment and Use of Foreign Workers in the Russian Federation, both approved by Presidential Decree No. 2146 of 16 December 1993.

185. The aim of the practical activity of the Federal Migration Service of Russia in this sphere is protection of the national labour market, priority of Russian citizens in the filling of job vacancies, protection of the rights of Russian citizens working abroad, and helping them to find employment from foreign employers within the framework of intergovernmental and interdepartmental agreements. In contrast to recourse to commercial job-placement agencies, use of the services of this machinery does not assume a charge for assistance in job placement. Verification of this activity in connection with allegations that employees of the Federal Migration Service have combined their duties with commercial activity have failed to confirm any contravention of the law.

Article 13

186. The impermissibility of the unlawful eviction, banishment, extradition or deportation of a foreigner follows from the provision of the Constitution which confirms that foreigners and stateless persons have the same rights and obligations as citizens of Russia except "in instances specified in Federal law or by an international treaty of the Russian Federation" (para. 3 of art. 62). The Act "Refugees" directly stipulates that "a refugee may not be returned against his will to the country that he has forsaken" among the grounds for recognition of the status of refugee (art. 8 "Guarantees of the rights of refugees"). Russian legislation does not contain any punishment

measures involving the expulsion of foreigners from the country, with the exception of infringement of the "Foreign Citizens" Act and the extradition of criminals in accordance with international agreements.

187. At the same time, there is disquiet in Russian human rights circles over a number of cases of the deportation of persons with invalid papers or without papers, who were returned to Russia as the country of transit by other States or who had made applications to be given refuge that were not considered either by the authorities of the States to which they had been sent or in which they were, or by the Russian competent bodies, and there is a need to take some necessary organizational measures in accordance with Presidential Decree No. 2145 of 16 December 1993 "Measures for the Introduction of Immigration Control", in the context of the requirements of the international standards, especially article 13 of the Covenant.

Article 14

188. Equality before the law and the court is embodied in the Constitution (art. 19), in the Code of Criminal Procedure (art. 14) and in the Code of Civil Procedure (art. 9).

189. Cases are invariably heard in open court. Hearings in closed session are permitted only in cases provided by the law, and then all procedural rights must be maintained. Provision is made for such a case in article 18 of the Code of Criminal Procedure, when a hearing in open court would be prejudicial to the interests of the parties or the protection of State secrets. In addition, the court may decide, giving the grounds for so doing, to hear cases in closed session concerning offences by persons below 16 years of age and sexual offences, and also other cases with the aim of not disclosing intimate details of the life of persons concerned in the case. In addition, the hearing of civil cases in closed session is permitted with the aim of preventing disclosure of intimate details of the life of persons concerned in the case, and also of ensuring the confidentiality of adoption. However, the judgement of the court is invariably pronounced in public.

190. Every person accused of committing a crime shall be presumed innocent until proved guilty in the manner laid down by the law and established by the putting into effect of the sentence of a competent, independent and impartial court (para. 1 of art. 49 of the Constitution). A defendant is not obliged to prove his innocence (para. 2 of art. 49). Unreconcilable doubts concerning individual guilt shall be interpreted in the defendant's favour (para. 3 of art. 49).

191. When a person is charged the investigating officer shall explain the nature of and grounds for the charge to the accused in accordance with articles 148 and 149 of the Code of Criminal Procedure of the RSFSR, and shall also explain his rights, in particular, the right to be acquainted with all the evidence in the case either independently or with the assistance of an interpreter. The documents of the investigation and the trial are supplied to the defendant in his mother tongue or in any other language of which he has a command (art. 17 of the Code of Criminal Procedure of the RSFSR). The services of a translator are provided free of charge.

192. Under article 48 of the Constitution every person is guaranteed the right to have qualified legal assistance. That assistance is rendered free of charge in cases laid down by the law. In particular, the preliminary inquiry body, the court, or the procurator may decide that it is essential for there to be a defence lawyer and may relieve the dependant in whole or in part from the cost of legal aid. Every accused person held in custody has the right to employ a lawyer (counsel for the defence) from, respectively, the time of being detained, of being remanded in custody or of being accused (para. 2 of art. 48 of the Constitution). The defence lawyer is chosen and engaged by the defendant himself, his legal representative, or other persons acting on the instructions of or with the agreement of the accused (art. 48 of the Code of Criminal Procedure of the RSFSR). The defence lawyer is entitled from the time of his appointment to the case to an unlimited number of meetings with the accused (art. 51 of the Code of Criminal Procedure of the RSFSR), which gives the accused the right to communicate with the defence lawyer as often as is necessary.

193. In the preliminary inquiry stage and in the court the defendant is entitled to apply for the summoning of any witness, including witnesses testifying against him, and to put any questions to them (arts. 46 and 223 of the Code of Criminal Procedure of the RSFSR).

194. With the aim of avoiding unwarranted delay in the hearing, the law sets time limits to be adhered to by the investigator and the court. In particular, the investigation of criminal cases must be completed within two months (art. 133 of the Code of Criminal Procedure of the RSFSR), the date for the trial must be set no later than 14 days after the case comes to the court if the accused is being held in custody, and one month for other cases (art. 223-1 of the Code of Criminal Procedure of the RSFSR).

195. The law lays down the special nature of court proceedings for cases of crimes committed by juveniles. Section 7 of the Code of Criminal Procedure of the RSFSR, which provides special regulations on these matters, contains rules that have regard to age and to the need for the correction and re-education of juveniles.

196. Every person convicted of a criminal offence has the right to have the case reviewed by a higher court in the manner laid down by Federal law, as well as the right to seek a pardon or reduction of the sentence (para. 3 of art. 50 of the Constitution). Under the same article of the Russian Constitution, no one may be held criminally responsible or responsible in any other way twice for the same offence (para. 1 of art. 50).

197. In case of groundless conviction any citizen is entitled to restitution from the State or to damages for the harm caused (arts. 52 and 53).

198. A considerable part of the work of the courts is concerned with matters relating to the rehabilitation of victims of political repression. The law provides that such persons are entitled to financial compensation.

199. The Act on the concept of legal reform proposes work on a draft law entitled "On amendments and additions to the Act of the Russian Federation 'On the Status of the Courts in the Russian Federation'", with the aim of bringing

it into line with the new Constitution, after which mandated representatives of the All-Russian Congress of Judges may submit a legislative proposal to the State Duma. The main task of the reform is "to bring the courts closer to the people and to protect them from the influence of the bodies (or officials) of other branches of State authority and local self-government". In that connection, it is proposed to form Federal court districts embracing the territory of two or more members of the Federation, and court districts of the members of the Russian Federation, divided in their turn into court sections in the territory of the republics, krais and oblasts, and the cities with Federal status. The boundaries of the court districts and sections need not coincide with the administrative boundaries. The authors of the draft are of the idea that the system of courts of general jurisdiction should take the following shape: Justices of the Peace - judges of first instance, sitting alone and hearing cases in the court sections. Above them in the assumed hierarchy there would be district courts operating in the court districts - legal bodies of the members of the Russian Federation. Next will come Federal inter-regional courts, the main function of which should be supervision of the administration of justice by the courts of members of the Russian Federation and the consideration of cases under the procedures of appeal and review. It is proposed to introduce an "appeal court" as "an independent legal structure between the district court and the high court of a member of the Russian Federation". The supreme legal body will still be the Supreme Court of the Russian Federation, the main task of which will become "ensuring uniformity in the application by the courts of the legislation in force".

Article 15

200. The content of article 15 of the Covenant is reflected in article 54 of the Constitution:

> "1. Laws establishing or heightening responsibility shall not have retrospective force.
>
> "2. Nobody may be held responsible for an act that was not considered to be an offence at the time of its perpetration. If following the perpetration of an offence criminal responsibility for it has been abolished or reduced, the new law shall apply".

201. Under article 6 of the Criminal Code the criminality and the punishability of an act are determined by the law in force at the time when the act was committed. If a person has committed a crime for which the law lays down a more severe punishment than that previously existed, the old law shall apply. This principle is established by paragraph 3 of article 6 of the Criminal Code of the RSFSR: "An Act establishing the punishment for an act or that increases the punishment shall not have retrospective effect". At the same time, an Act that decreases the punishment does have retrospective effect, i.e. it does apply to an act committed before it was promulgated (para. 2 of art. 6 of the Criminal Code of the RSFSR).

202. The principle of the inevitability of punishment (para. 2 of art. 15 of the Covenant) is reflected in article 4 of the Criminal Code: "All persons who have committed crimes in the territory of the RSFSR shall be punishable in accordance with this Code".

203. Article 9 of the Code on Administrative Offences states that a person who has committed an administrative offence is liable on the basis of the legislation in force at the time and in the place where the offence was committed. Acts that decrease or abolish liability for administrative offences are retrospective in effect, whereas those that establish or increase liability are not retrospective in their effect.

Article 16

204. The recognition of any person in the territory of Russia as a person before the law is an important element of the guarantees of human rights and freedoms (chap. 2 of the Constitution), in which regard is, of course, had to the specific features of the regulation of the rights and obligations of different categories of people (members of the armed services, migrants, foreigners etc.) in accordance with the Russian legislation.

Article 17

205. Freedom from arbitrary or illegal interference in private and family life, from arbitrary or illegal encroachment on the home or on the privacy of correspondence, and on dignity and reputation is guaranteed in the following articles of the Constitution:

(a) Article 21, paragraph 1: "The dignity of the individual shall be protected by the State. Nothing may serve as grounds for detracting from it."

(b) Article 23:

"1 Everyone shall have the right to inviolability of private life, to personal and family privacy and to protection of his honour and good name.

"2. Everyone shall have the right to confidentiality of correspondence, telephone conversations, and postal, telegraphic and other communications. Restriction of this right shall be allowed only on the basis of a judicial decision."

(c) Article 24, paragraph 1: "The collection, storage and use of information on the private life of an individual without that individual's permission shall not be permitted."

(d) Article 25: "The home shall be inviolable. Nobody shall have right of entry into the home against the will of the persons residing in it except in cases laid down by Federal law or on the basis of a judicial decision."

206. The right of every person to the protection of the law against such interference or encroachment is also confirmed in the Constitution:

(a) Article 45:

"1. State protection of human and civil rights and freedoms in the Russian Federation shall be guaranteed.

"2. Every person shall be entitled to defend his rights and freedoms by all means not prohibited by the law."

(b) Article 46:

"1. Every person shall be guaranteed the legal protection of his rights and freedoms.

"2. The decisions and actions (or the failure to act) of government authorities, local self-governing authorities, public associations and officials may be contested in court."

207. Article 12 of the Code of Criminal Procedure of the RSFSR provides that "the personal life of citizens, and the confidentiality of correspondence, telephone conversations and telegraphic communications shall be protected by the law", and that "nobody shall be entitled without legal grounds to enter the home against the will of the persons residing in it."

208. The constitutional right of citizens of Russia to protection of their honour and dignity is guaranteed in civil legislation. According to article 7 of the Civil Code a citizen is entitled to take action through the court to refute slanderous or libellous information that is an affront to honour and dignity. In particular, if such information has been disseminated through organs of the mass media, the stipulation is made that it must be refuted in the same mass media organs in the manner laid down. In addition, organs of the mass media, officials or citizens guilty of disseminating slanderous or libellous information that is an affront to honour and dignity may be obliged by decision of the court to pay damages for the moral or other non-property harm caused to the citizen, the amount of which shall be determined by the judge.

209. It is proposed that special protection should be provided for individual categories of citizens, whose activity in an official capacity may make them the subject of attack. Thus, work is nearing completion on an Act to be entitled "State protection for judges, members of the law-enforcement bodies and inspectorates, victims and witnesses".

210. The Act of 27 December 1991 "The Mass Media" contains provisions to protect the honour and dignity of citizens in the case of the dissemination in the mass media of slanderous or libellous information that is defamatory to them or harms their rights and legal interests (arts. 43, 44, 46). Provision is also made for compensation for the moral damage caused to a citizen as a result of the dissemination by the mass media of slanderous or libellous information that is an affront to honour and dignity (art. 62).

211. Article 5 of the Act of the Russian Federation of 2 July 1992 "Psychiatric Care and Guarantees of Civil Rights in its Provision" makes special provision for a respectful and humane attitude excluding demeaning behaviour, and the impermissibility of restricting the rights and freedoms of sufferers from mental disorders.

212. Constitutional guarantees of this freedom need to be written into the sectorial legislation, and this should be done as a result of the work of the new parliament.

Article 18

213. The right to freedom of thought, conscience and religion, which is of special significance for Russia, in which many faiths traditionally co-exist, is guaranteed in the following articles of the Constitution:

(a) Article 28: "Every person shall be guaranteed freedom of conscience and freedom of religion, including the right to profess any religion individually or jointly with others or not to profess any religion, and freely to choose, hold and propagate religious and other beliefs and to act in accordance with them."

(b) Article 29, paragraph 1: "Every person shall be guaranteed freedom of thought and speech."

214. Whereas the declaration of the freedom of conscience and religion served until the late 1980s as a shield for the policy of State atheism, the authorities now acknowledge the important role of religion in the revival of spirituality and they are giving real assistance and support to various Russian religious organizations and associations. Thus, in furtherance of a Presidential Ordinance of 27 April 1993, the Government of Russia adopted Decree No. 466 of 6 May 1994, approving the provisional arrangements for the transfer to religious associations of property of a religious nature in Federal ownership. Under that Decree more than 300 religious buildings and structures have been transferred into the property of various religious associations.

215. Article 14 of the Constitution is highly significant; its paragraph 1 states that no religion may be declared to be an official or compulsory religion. Paragraph 2 of the same article proclaims that religious associations shall be separate from the State and equal before the law. Concrete expression is thus given to paragraphs 1 and 2 of article 18 of the Covenant.

216. The "Freedom of Religion" Act of 25 October 1990 was adopted in accordance with article 18 of the Covenant. The right to freedom of thought, conscience and religion is confirmed in articles 3-6 and article 22 of that Act. The use of coercion in connection with the exercise of this right is prohibited in articles 6 and 16 of the Act. Violation of the freedom of conscience and religion is punishable under the Criminal Code (art. 143), while impeding exercise of the right to that freedom is an offence under the Code of Administrative Offences (art. 193), if such actions do not contain the elements of a criminal offence. Convicts have the right to profess any religion or none at all. They are permitted to attend places of worship or members of the clergy are invited to come and hold religious services. Churches, mosques and meeting houses are being opened in colonies. Restrictions on the exercise of this freedom are set out in paragraph 2 of article 4, which states that the exercise of human and civil rights should not interfere with the rights and freedoms of other individuals.

217. The Act "Status of Members of the Armed Services" (art. 8) provides that:

"1. Members of the armed services are entitled to take part in their free time in acts of worship and religious ceremonies as private individuals.

"2. Members of the armed services do not have the right to refuse to carry out their military duties on grounds of their attitude towards religion or to use their military authority to disseminate some attitude or other towards religion.

"3. Religious symbols, religious literature and objects of worship are used by members of the armed services in an individual capacity.

"4. The State has no obligation to satisfy the requirements of members of the armed services in connection with their religious beliefs and the need to perform religious ceremonies.

"5. The setting up of religious associations in military units is not permitted."

218. Paragraph 2 of article 29 of the Constitution prohibits the propagation of religious supremacy. In addition, paragraph 2 of article 6 of the "Freedom of Religion" Act stipulates that the incitement of enmity and hatred on account of the religious or atheistic beliefs of citizens is against the law. Such premeditated acts are prosecutable under the Criminal Code (art. 74, see also in relation to art. 20 of the Covenant). The requirement that the State should respect the freedom of parents or legal guardians with respect to providing for the religious and moral education of a child in accordance with the faith of their choice is guaranteed in paragraph 5 of article 9 of this Act. In accordance with article 10 of the Act, which corresponds to paragraph 2 of article 18 of the Covenant, all religions and religious associations are equal before the laws of the State. No one religion or religious association may enjoy any advantages over or be subjected to any restrictions by comparison with others.

219. The State is neutral in matters of freedom of religion and belief, i.e. it is not on the side of any religion or outlook. This principle is confirmed by the Federal Public Service Regulations approved by Presidential Decree No. 2267 of 22 December, clause 10 of which, in particular, prohibits a public servant from using his official powers "to propagate an attitude towards religion and to attend religious ceremonies in his capacity as a public servant".

220. The possibility of refusing to do military service on grounds of conscience is recognized in Russia as the legal implementation of the right to freedom of conscience and religion as expressed in resolution 1987/46, dated 10 March 1987, of the United Nations Commission on Human Rights. It is also acknowledged that there is a need to adopt legislation in this respect and to take measures to ensure release from military service on the basis of such a refusal on genuine grounds of conscience, as provided in the Commission's resolution 1989/59. The Constitution (para. 3 of art. 59) guarantees such a right of refusal "in cases where the performance of military service is

against a citizen's beliefs or religion, and also in other cases for which provision is made by Federal law, the citizen shall have the right to substitute an alternative form of service for military service."

221. In 1993, a draft act on alternative service was given a first reading in the Russian parliament; that act makes provision, in particular, for the organization of alternative service, the procedure for its performance, and the approval by the Government of regulations on the performance of alternative service. It is proposed that such an act be adopted in 1994.

222. As regards confirmation of the right to freedom of thought, article 18 of the Covenant coincides with article 13 (paras. 1 and 2) and article 29 of the Constitution. Thus, paragraph 1 of article 13 specifies: "Ideological diversity shall be recognized in the Russian Federation". With the negative historical experience of the country in mind, paragraph 2 of the same article states: "No ideology may establish itself as the ideology of the State or as an obligatory ideology".

Article 19

223. The freedom of thought that is proclaimed in article 18 of the Covenant and defined in greater detail in article 19 is guaranteed in article 29 of the Constitution of Russia: "Every person shall be guaranteed freedom of thought"; "Every person shall have the right freely to seek, receive, transmit, reproduce and disseminate information in any legitimate way." Paragraph 3 of article 29 of the Constitution gives concrete expression to paragraph 1 of article 18 of the Covenant, when it asserts, taking into account the historical development of our society: "Nobody may be forced to express his opinions and beliefs or to renounce them." Paragraph 2 of article 19 of the Covenant is also given concrete expression in paragraph 5 of article 29 of the Constitution, which states: "Freedom of the mass media shall be guaranteed. Censorship shall be prohibited." Paragraph 3 of article 19 of the Covenant is reflected in article 29 of the Constitution with some differences of wording. Restrictions on the use of freedom of speech are formulated as follows: "No propaganda or agitation inciting social, racial, national or religious hatred and enmity shall be permitted. Propaganda for social, racial, national, religious or linguistic supremacy shall also be prohibited." Protection is thus provided for public order, and for public health or morals. Article 29 is effective in the sense of paragraph 3 of article 17 of the Constitution and of paragraph 3 (a) of article 19 of the Covenant, where it is specified: "The exercise of human and civil rights and freedoms must not infringe the rights and freedoms of other persons."

224. The article of the Covenant under consideration has been reflected in the Act of the Russian Federation entitled "The Mass Media", articles 1-6 of which correspond in content to article 19 of the Covenant. The Decree of 10 June 1994 "Consumer Protection" is intended to promote the human right to reliable financial information.

225. The Act "Status of Members of the Armed Services" (art. 7) regulates the exercise by members of the armed services of their right to freedom of speech, and their right to express their opinions and beliefs, placing them under the

obligation not to disclose State secrets and military secrets, and not to discuss and criticize the orders of commanders (commanding officers).

226. The provisions of the Act "State Secrets" apply to citizens who have undertaken the obligation or who are obliged by their position to comply with the requirements of the legislation on State secrecy. The Act treats the individual not as the repository of information that constitutes a State secret but as a subject of contractual relations with the State.

227. The rights and legal interests of individuals connected with the expression of their opinion and its dissemination are protected by the law, including their protection in the form of intellectual property in the aspects of author's copyright and patent rights, and the institution of the commercial secret.

228. A set of measures to guarantee the freedom of the mass media and to make real provisions for the constitutional rights of citizens to obtain truthful information needed by them was carried out in the Russian Federation in 1993. With the aim of preventing monopolization of the mass media and illegal interference in their activity, and in connection with the real threat to freedom of the mass media guaranteed in Russia, Presidential Decree No. 376 of 20 March 1993 "Protection of the Freedom of the Mass Media" guaranteed the protection of the law and the President to the mass media and the means of dissemination, and also defined the measures that needed to be taken in that sense.

229. There is in the Russian Federation a system of various sources for the official publication of Federal Acts and other legislation of the Federal authorities, including:

(a) All Federal Acts have to be published in the "Collected Legislation of the Russian Federation" in accordance with a Presidential Decree of 5 April 1994 (they previously appeared in the "Gazette of the Congress of People's Deputies of the Russian Federation and the Supreme Soviet of the Russian Federation", while Presidential Decrees and Decrees of the Government of the Russian Federation appeared in the "Collected Enforceable Enactments of the President of the Russian Federation and the Government of the Russian Federation"), and also in the "Russian Gazette";

(b) For the first time an effective system has been established in the Russian Federation for the publication of the enforceable enactments of Federal ministries and departments that give concrete expression to and supplement the rights and duties of citizens, and those of the enterprises, organizations and offices that form part of a given ministry or department. All such enactments have to be officially recorded in the Ministry of Justice of the Russian Federation, and must then be published in "Russian News". Enforceable enactments of Federal ministries and departments that regulate the rights and duties of citizens and other individuals may not be brought into force and do not have to be used and applied until they have been published in the specified source;

(c) In order to ensure that State bodies and citizens have information on the statutory instruments in force in the Russian Federation, specific

measures for the creation of a standard data bank of legal information, including the enforceable enactments of the supreme legislative and executive bodies of the Russian Federation, and the statutory instruments of all members of the Federation, have been outlined in Presidential Decrees (No. 447 of 23.04.93; No. 663 of 12.05.93; and No. 966 of 28.06.93).

230. In amplification of the Constitution, Presidential Decree No. 2334 of 31 December 1993 "Additional Guarantees of the Rights of Citizens to Information" has ordered the preparation of a draft Act of the Russian Federation on the right to information. The Decree establishes that the activity of State bodies, organizations and enterprises, public associations, and officials shall be conducted in accordance with the principles of the openness of information, the expression of which is that information that is of public interest or that touches upon the personal interests of citizens shall be accessible, and also that citizens shall be kept systematically informed of decisions that are proposed or have been adopted.

231. The obligation on State television and radio broadcasting companies to report the main provisions of the enactments and decisions of State bodies on the main issues of domestic and foreign policy on the day of their publication is established by a Decree pursuant to the Act "The Mass Media". In June 1994 the Committee on Information Policy and Communications of the State Duma prepared for consideration a draft Federal Act on State support for the mass media of the Russian Federation.

232. Decree No. 2335 of the President of the Russian Federation "Court of Appeal of the President of the Russian Federation for information disputes", dated 31 December 1993, is also aimed at ensuring the rights of citizens to information guaranteed by the Constitution of the Russian Federation and observance of their legal interests in this area.

233. Presidential Decree No. 228 "Approval of the Statutes of the Court of Appeal of the President of the Russian Federation for information disputes", dated 31 January 1994, defines the duties of the Court of Appeal, which include assisting the President of the Russian Federation to protect rights and freedoms in the area of the mass media, ensuring the objectivity and reliability of reports, and the principle of equal rights in the sphere of the mass media, etc.

234. In March 1994 the Court of Appeal considered cases of breaches of the provisions of the Constitution of the Russian Federation on equal rights for women in a number of the organs of the mass media (see also in relation to art. 20 of the Covenant).

235. The aim of regulating the activity of the mass media is served by a set of Presidential Decrees of 22 December 1993, including "Improvement of State Control in the Sphere of the Mass Media" (No. 2255). Work is nearing completion on the preparation for adoption of an Act on the procedure for reporting the activity of official bodies in the State mass media.

Article 20

236. Propaganda for war, consisting of the spreading of views and ideas aimed at the unleashing of war between States, is prohibited in Russia and punishable in accordance with article 71 of the Criminal Code. Prohibition of the kindling of national, racial or religious hatred as an incitement to discrimination, hostility and violence follows from paragraph 2 of article 29 of the Constitution. Additional guarantees on that score follow from the obligation of the State to protect human and civil rights and freedoms (art. 2 and para. 1 of art. 45), and to ensure the equality of individuals and prohibit any restriction of their rights on grounds of race, nationality, language or religion (para. 2 of art. 19). The Criminal Code establishes liability for the kindling of racial or national hostility and discord (art. 74).

237. The spread in the post-Soviet area and especially in Russia of xenophobia, extremism, ideas of intolerance, ethnic superiority, the cult of racial and religious exclusiveness, the "national idea" and nationalistic slogans, and of demands for the establishment of a national and authoritarian regime in the country, and the carrying out of an imperial policy based on the repression of non-Russians and dissidents is a cause of concern to the Russian authorities and to a society whose democratic transformations are being put at risk.

238. The use of these ideas and slogans in the course of the events in Moscow on 3-4 October 1993 to justify the changeover from words to acts of violence entailing human casualties was decisively opposed by the Russian authorities, who suspended the activities of a number of public associations (Regulations of the Ministry of Justice No. 131/16-47 and No. 133/16-47 of 4 and 6 October 1993). By Presidential Decree No. 1661 of 19 October 1993 a number of public associations and parties that had advocated ideas of national hostility and discord, and had engaged in activities aimed at the destabilization of the State and the monopolization of power were deprived of the right of registration for participation in the elections to parliament and to the representative bodies of the members of the Russian Federation of 12 December 1993.

239. Since 1991 the courts have tried 10 criminal cases brought under article 74 of the Criminal Code. Five guilty verdicts were returned in these cases. A further 14 cases under the same article are proceeding. A number of the cases tried dealt with the spreading of ideas of anti-semitism. In this connection, the Office of the Procurator-General examined 24 matters on which it was decided not to proceed, one case was discontinued on legal grounds and three are going to trial.

240. Actual cases of the publication of materials that might be interpreted as conducive to the fomenting of inter-ethnic discord are heard by the Court of Appeal of the President of the Russian Federation for information disputes.

241. The struggle against throwbacks to the past in the consciousness of some citizens requires efforts to overcome the threat of the spread of aggressive nationalism and xenophobia, fascist ideas, hatred of Jews, and intolerance of ethnic minorities (see also in relation to arts. 1, 4 and 27 of the Covenant).

In that connection the Russian authorities are in practice taking the line of eradicating the principles of intolerance, increasing the sense of justice in society in conjunction with strengthening the guarantees of freedom of speech, of demonstrations and public organizations.

242. The carrying out of an initiative in the area of the strengthening of international guarantees of freedom from aggressive nationalism has an important place in Russian foreign policy. A Declaration on Aggressive Nationalism was adopted on the initiative of Russia at the Rome Meeting of the Council of Foreign Ministers of the CSCE countries in December 1993. The Joint Soviet-American Declaration on Human Rights adopted by the Presidents of Russia and the United States of America in January 1994 makes reference to the threat to peace and democracy from aggressive nationalism, anti-semitism and political extremism (see also in relation to art. 27). The adoption by the State Duma on 23 February 1994 of a Decree "Amnesty for Certain Crimes Committed in the Sphere of Political and Economic Activity" (including the granting of an amnesty for those liable to prosecution in connection with the events of 19-21 August 1991 and 1 May 1993, and in connection with the opposition of 21 September - 4 October to Presidential Decrees) is seen in Russia as a step towards national reconciliation and civil peace in the country, and a confirmation of the civilized principles of tolerance under the difficult conditions of the development of the domestic political situation in Russia.

Article 21

243. The right of peaceful assembly is reflected in article 31 of the Constitution: "Citizens of the Russian Federation shall have the right to assemble peacefully, without weapons, and to hold meetings, rallies, demonstrations and processions, and to picket."

244. Use is being made at the present time of the Decree of the Presidium of the Supreme Soviet of 28 July 1988 "Procedure for the Organization and Holding of Meetings, Rallies, Street Processions and Demonstrations in the USSR", the application of which, until such time as an Act has been adopted on this matter, was confirmed by the Presidential Decree of 25 May 1992 "Procedure for the Organization and Holding of Meetings, Street Processions, Demonstrations and Picketing". A Federal Act in this area is currently in the drafting stage.

245. With regard to the city of Moscow, the Presidential Decree of 24 May 1993 approved "Provisional Regulations on the Procedure for Notifying the Executive Authorities of the City of Moscow of the Holding of Meetings, Street Processions, Demonstrations and Picketing in the Streets, Squares and Other Public Open Spaces of the City." Restrictions on the holding of demonstrations have been introduced for a number of Moscow's central squares and streets. In accordance with these Regulations notifications are not accepted in a number of instances, including instances of actions in contravention of the rules of public morale and morality, and the lack of undertakings to ensure observance of public order.

246. The Act "Status of Members of the Armed Services" (art. 7) provides that:

"1. Members of the armed services, in exercising their right to freedom of speech, to express their opinions and beliefs, and to have access to the obtaining and dissemination of information, must not disclose State secrets and military secrets, and must not discuss and criticize the orders of commanders (commanding officers).

"2. Members of the armed services are entitled when off duty to attend meetings, rallies, street processions, demonstrations and picketing that do not pursue political ends and are not prohibited by the State authorities and administration or the local self-governing authorities.

The participation of members of the armed forces when on duty in gatherings and public measures is governed by the general military regulations of the Armed Forces of the Russian Federation.

"3. The participation of members of the armed forces in strikes is prohibited."

Article 22

247. Article 30 of the Constitution makes provision for the right to freedom of association:

"1. Everybody shall have the right of association, including the right to form trade unions to protect their interests. Freedom for the activity of public associations shall be guaranteed.

"2. Nobody may be obliged to join any association whatsoever or to remain in it."

248. In accordance with article 9 of the Act "Status of Members of the Armed Services", members of the armed services may be members of public associations that do not pursue political ends, and may take part in their activity when not on duty.

249. In accordance with Decree No. 2057-1 of the Supreme Soviet of the RSFSR, dated 18 December 1991, "Registration of Public Associations in the RSFSR and the Registration Charge", the legislation of the USSR on public associations (including political parties, trade unions and other associations) is applicable in Russia in so far as it is not at variance with the legislation of Russia and the generally recognized rules of international law. Consequently, the USSR Act "Public Associations" of 9 October 1990 will remain in force, with allowance for the changes made by the above-mentioned decree governing the registration of these associations.

250. Provision for the right of members of the militia to join trade unions is made in the 1991 Act on the militia and in the Regulations on Service in Units of the Russian Ministry of the Interior.

251. Attempts to halt the activity of a number of the public associations of the opposition, whose members had taken part in mass disturbances, did not result in their dissolution since, under the existing Act of 9 December 1990, their activity may be halted only by their reorganization or dissolution decided upon by their founders or by a court when such an association has carried out acts with the aim of or as a means of overthrowing or changing the constitutional order by force, or of impairing the unity of the country by force, of making propaganda for war, violence or brutality, of stirring up social, racial, national or religious discord, or carrying out other criminal acts, and also when they set up militarized or armed formations (para. 3 of art. 3 and art. 14 of the Act).

252. The State Duma is currently discussing a draft Act on the civil right of association, in which the corresponding international standards are taken into consideration.

Article 23

253. The obligations of the State concerning protection of the family are to be found in article 38 of the Constitution, which stipulates:

> "1. Motherhood and childhood, and the family are protected by the State.
>
> "2. The care and upbringing of children are the right and duty of the parents equally.
>
> "3. Able-bodied children who have reached 18 years of age shall look after parents who are incapable of working."

254. In accordance with article 39 of the Constitution "Everyone shall be guaranteed social security in old age, in the event of sickness, disability or loss of the breadwinner, for the upbringing of children and as otherwise laid down by the law."

255. Presidential Decree No. 1908 of 19 November 1993 "Commission on Matters Relating to Women, the Family and Demography" set up an advisory body in the Office of the President of the Russian Federation, the Commission on Matters Relating to Women, the Family and Demography, for the formulation and coordination of public policy aimed at the achievement of equal rights and opportunities for women and men, improvement of the status of women, support for the family and solution of demographic problems. The Commission, whose composition was approved, was established on the basis of the Presidential Commission on Matters Relating to Women, the Family and Children that had been set up in accordance with Presidential Decree No. 337 of 4 March 1993 "Pressing Tasks of Public Policy Concerning Women".

256. The "Principles of the Legislation of the Russian Federation on Protection of the Health of Citizens", dated 22 July 1993, stipulates that "Every citizen shall have the right, on medical grounds, to free advice on matters of family planning, venereal diseases and diseases that constitute a threat to others, on the medical and genetic aspects of family and sexual relations, and also to medical, genetic and other advice and examination in

the establishments of the State and municipal health care system, with the object of preventing possible hereditary diseases in the offspring." The Principles... also contain a special section entitled "Medical activity concerning family planning and regulation of the human reproductive function", which includes matters of artificial impregnation (embryo implantation), artificial interruption of pregnancy, and voluntary medical sterilization.

257. Governmental Decree No. 913 of 28 November 1992 "The Department for Problems of the Family, Women and Children of the Ministry of Social Security of the Russian Federation" established the department as a Federal body chiefly responsible for the carrying out of a purposeful policy on family matters.

258. Similar State bodies (committees and departments) are being set up in executive bodies of the members of the Russian Federation. A Family Research Institute has also been set up under the Ministry of Social Welfare of the Russian Federation (Governmental Decree No. 646 of 12 July 1992).

259. Presidential Decree No. 431 of 5 May 1992 "Social Support Measures for Large Families" provided benefits for large families. The categories of families concerned are defined by the executive bodies of members of the Russian Federation. In Moscow and in most regions of the country the accepted definition is families that have three or more children. Such benefits provide for reduced charges for heating, water consumption and so on, free transport to and from school and free school meals, free school uniforms and sports kit, and priority for admission to preschool establishments etc.

260. By Decree No. 2464-1 (6 March 1992) of the Supreme Council of the Russian Federation "Payment Arrangements for Children Attending Preschool Juvenile Establishments and Financial Support for the System of These Establishments", the payment for children attending preschool juvenile establishments is set at no more than 20 per cent of the cost of keeping a child in a given establishment, and for parents who have three or more children no more than 10 per cent of the cost. Parents of physically or mentally defective children are exempted from all payment for upkeep, as are parents with children in juvenile preschool establishments for sufferers from tuberculosis. Additional payment benefits are established for regions of the Russian Federation.

Article 24

261. The right of the child to protection by its family, society and the State, which is based on the constitutional and other guarantees set out above, is backed by additional measures.

262. In furtherance of Presidential Decree No. 543 "Urgent Measures for Implementation of the World Declaration on the Survival, Protection and Development of Children in the 1990s" a Governmental Decree was adopted that confirmed a catalogue of measures to improve the situation of children in the Russian Federation that included improved care for the newborn, organization of the production of medical equipment for the treatment of children and for obstetric use, purchase of dietetic infant foods and also essential imported equipment and supplies to maintain domestic production of mass inoculation

vaccines, free issuing of special infant milk products for all children in the first and second years of life and so on (Governmental Decree No. 610 of 21 August 1992 "Urgent Measures to Improve the Situation of Children in the Russian Federation").

263. A Federal programme "Children of Russia", prepared and approved by the Government, includes target programmes: "Orphaned children", "Invalid children", "Children of the North", "Family Planning", "Children of Chernobyl" and "Development of the Infant Foods Industry" (Governmental Decree No. 909 of 9 September 1993 "The Federal Programme 'Children of Russia'"). Governmental Decree No. 69 of 31 January 1994 approved the Procedure for the drafting of a national action plan in the interests of the children of Russia down to the year 2000.

264. In furtherance of Governmental Decree No. 8848 of 23 August 1993 the ministries and departments concerned have been made responsible for the production of an annual State report on the situation of children in the Russian Federation. Before 1993 such reports were prepared by the nongovernmental organization "The Children's Foundation". The first such report "The Situation of Children in Russia" was prepared in 1990.

265. Governmental Decree No. 409 of 20 June 1992 "Urgent Measures of Social Protection for Orphaned and Abandoned Children", increased the standards of provision and the benefits for the child rearers (child minders) in State children's homes, and extended these standards and benefits to orphans and abandoned children fostered (adopted) by families, granting a monthly payment of the monetary equivalent to the foster parents (guardians) of such children.

266. The Government set up a Commission to coordinate operations connected with the implementation in the Russian Federation of the United Nations Convention on the Rights of the Child and the World Declaration on the Survival, Protection and Development of Children (Governmental Decree No. 1077 of 23 October 1993).

267. Presidential Decree No. 1338 of 6 September 1993 "Prevention of Juvenile Vagrancy and Delinquency, and Protection of the Rights of Juveniles" set up a system of State bodies to provide an all-round solution to the problems of preventing juvenile vagrancy and delinquency, and providing protection for the rights and legal interests of juveniles. It was decided that special establishments (services) should be set up in 1993-1994 for juveniles in need of social readaptation, and also special educational establishments of the open type for juvenile offenders and special (correctional) establishments for deviant juveniles and those guilty of socially dangerous acts.

268. It is proposed that the Government of the Russian Federation should set up an interdepartmental commission for juvenile affairs to coordinate the activities of Russian ministries and departments for the prevention of juvenile vagrancy and delinquency.

269. The amount of social benefits and compensation payments to families with children was repeatedly increased in 1992-1993 and the payment system was revised in furtherance of Presidential Decree No. 2122 of 10 December 1993

"Revision of the System of State Social Benefits to Families with Children and Increases in Their Amount." The benefits being paid were replaced from 1 January 1994 by a single monthly payment for each child up to 16 years of age (until the end of schooling for those attending general educational establishments). The amount of the benefit is fixed in relation to the age of the child: 70 per cent of the minimum wage up to 6 years old, 60 per cent between 6 and 16 years old. The established amount of the benefit is increased by 50 per cent for the children of single mothers, for children whose parents refuse to pay for their keep, and also for the children of members of the armed services called up for military service.

270. In furtherance of the Act "Citizenship of the Russian Federation" of 28 November 1991 (as amended by the Act of the Russian Federation of 17 June 1993) a child whose parents were citizens of the Russian Federation at the time of the child's birth is a citizen of the Russian Federation irrespective of the place of birth (art. 14). In the case of parents of different nationalities, one of whom was a citizen of the Russian Federation at the time of the birth of the child, the question of the citizenship of the child is determined, irrespective of the place of birth, by a written agreement of the parents. In the absence of such an agreement the child acquires citizenship of the Russian Federation if born in the territory of the Russian Federation or if it would otherwise become a stateless person (art. 15). A child born in the territory of the Russian Federation to parents who are citizens of other States is a citizen of the Russian Federation unless those States grant it their citizenship (art. 17).

271. When the citizenship of the parents changes, so also does that of the children. Should one of the parents retain citizenship of the Russian Federation, the citizenship of the child remains unchanged. At the request of a parent whose citizenship ceases, and with the written agreement of the parent who remains a citizen of the Russian Federation, the child ceases to be a citizen of the Russian Federation, provided that it is offered another citizenship (arts. 26 and 28).

272. The citizenship of children up to 14 years of age follows the citizenship of the parents, but that of children between 14 and 18 years of age is changed with their agreement (art. 25).

273. Disputes between parents concerning the nationality of the children are considered by a court on the basis of the interest of the child (art. 31).

274. In accordance with paragraph 5 of article 10 of the Act "Freedom of Religion", the child has the right freely to express its opinion, and the right to freedom of thought, conscience and religion. The State respects the freedom of the child and of its parents or legal guardians to provide for the religious and moral upbringing of the child in accordance with their beliefs and by their own choice.

Article 25

275. A number of the concrete civil rights specified in this article of the Covenant are reflected in article 32 of the Constitution. Thus, the civil right of participation in the conduct of public affairs is provided in

paragraph 1 of article 32, in which, although there is no provision that the representatives are "freely chosen", in the context of other provisions of the Constitution that is precisely what is intended. Participation in the conduct of public affairs is also guaranteed in paragraph 5 of article 32, which states: "Citizens of the Russian Federation shall have the right to participate in the administration of justice."

276. It was with the aim of ensuring interaction between the Federal authorities and public associations for the preparation of decisions of the President and the Government on the most important social and political matters that the Public Opinion Chamber was created in pursuance of the Presidential Ordinance of 17 February 1994 "Public Opinion Chamber of the President of the Russian Federation."

277. The right to elect and to be elected to State bodies and bodies of local self-government is enjoyed by the country's citizens, with the exceptions of those citizens whose incapacity has been recognized by a court, and also those kept in places of confinement following a court sentence.

278. In accordance with the Act "The Status of Members of the Armed Forces" (art. 9) that right is enjoyed by citizens in that category. Legislative provision has been made for determination of the special features of the legal position of members of the armed forces elected to such bodies.

279. Equality of access of citizens to the Public Service of Russia is guaranteed in paragraph 4 of article 32 of the Constitution and is governed by the Regulations on the Federal Public Service approved by Decree of the President of Russia No. 2267 of 22 December 1993. An analysis of the practical application of the provisions of these Regulations will subsequently make it possible to draft an appropriate Act.

280. The Regulations are based on the principle of equality of access to the Public Service for citizens of the Russian Federation in accordance with their capabilities and training, without any discrimination. An applicant for a post in the Public Service must have had an education and training corresponding to the job specification (para. 5 of sect. II). The qualifications needed for individual posts are laid down for the groups of senior and top posts by decision of the President, and for other posts by the Government of Russia or, on its behalf, by the appropriate State body (para. 6 of sect. II). "No direct or indirect restrictions whatsoever" on admission to the Public Service are permitted "on grounds of race, sex, nationality, language, social origin, property status, place of residence, attitude towards religion, beliefs, or membership of public associations" (para. 21 of sect. IV).

281. In practical terms many unsolved problems still remain outside the scope of the Regulations, in particular those connected with overcoming the incompetence, inefficiency, lack of drive and corruptibility of a part of the State machine, the organization instability at all levels, and the inadequacy and unsystematic nature of the legislation and regulations governing the Public Service. The salient points of a concept "Reforming the Public

Service of the Russian Federation", published in "*Russkaia gazeta*" of 23 December 1993, were thrown open to public discussion with the aim of helping forward practical work in this area.

Article 26

282. Equality before the law and the right to equal protection are guaranteed in article 19 of the Constitution, as has previously been noted in relation to articles 2 and 3 of the Covenant. The ways in which effect is given to the principle of non-discrimination is described in relation to articles 14, 23 and 25 of the Pact, as well as in the Report on implementation in the Russian Federation of the Convention on the Elimination of All Forms of Discrimination against Women.

Article 27

283. Support and protection for the rights of members of minorities and small nations contributes to the social stability of the State. Moreover, such measures are regarded not only as the "negative" protection of minorities, but also as their "positive" protection. Relations affecting the rights of national minorities and small nations are regulated on two levels in the Russian Federation - at the Federal level and at the level of the members of the Federation.

284. Paragraph 3 of article 68 of the Constitution strengthens the guarantee to all the peoples of the country regarding their right "to preservation of their native language, and to the establishment of conditions for its study and development".

285. The legislation of the Russian Federation that contains provisions on the rights of minorities and indigenous peoples whose numbers are small includes, inter alia, the Declaration on the State Sovereignty of the RSFSR of 12 June 1990, the Declaration on Human and Civil Rights of 22 November 1991, the constitutions of the republics and their declarations of State sovereignty, and also treaties of a number of the republics and legislation of the krais and oblasts that make up the Russian Federation. The obligations of the State in ensuring the cultural and linguistic individuality of minorities in the Russian Federation are also defined in the Act "The Languages of the Peoples of the RSFSR" of 25 October 1991, the "Education" Act of 10 July 1992, and "Principles of the Legislation of the Russian Federation on Culture" of 9 October 1992 and in other measures.

286. The Constitution of the Russian Federation does not merely guarantee the principle of the equal rights of citizens irrespective of their nationality (art. 19), but also the right freely to determine and specify their nationality, the right to use their native language, free choice of the language of communication, upbringing, education and creative expression (art. 26). The Constitution prohibits all forms of restriction on civil rights on the basis of race, nationality, language or religion (art. 19).

287. The Declaration on the State Sovereignty of the RSFSR of 12 June 1990 accords an important place to guaranteeing the right of each people of the Republic to self-determination in the national State and cultural forms of their choice.

288. Certain special rights that may be classified as measures for the "positive" protection of minorities are also embodied in some of the other legislation mentioned above. Thus, the Principles of the Legislation of the Russian Federation on Culture confirms and enlarges upon the right of peoples and other ethnic communities to preserve and develop their cultural and national individuality, to the protection, restoration and preservation of their age-old cultural and historical environment, and also the right of these ethnic communities to cultural and national autonomy.

289. The Act "Languages of the Peoples of the RSFSR" guarantees the right of national minorities to use their native language; the "Education" Act of the Russian Federation guarantees the right of minorities to education in their native language, and the "Employment" Act requires the State to carry out a public policy aimed at ensuring employment in the places where peoples and nationalities whose number are small live, taking into account the national features of their economic and cultural activity, and also the historically conditioned kinds of employment.

290. Article 69 of the Constitution states that the Russian Federation "shall guarantee the rights of indigenous peoples whose numbers are small in accordance with universally recognized principles and rules of international law and the international treaties to which the Russian Federation is a party", while article 71 defines matters concerning regulation and protection of the rights of national minorities, and the establishment of the principles of Federal policy and Federal programmes in the area of cultural and national development of the country as matters of Federal competence. In accordance with article 72 of the Constitution, the safeguarding of the rights of national minorities and also protection of the ancestral habitat and traditional way of life of small ethnic communities come under the joint competence of the Russian Federation and the members of the Russian Federation. The explanation for this is the universal nature of this problem for all regions, on the one hand, and the complexity of the ethnic and political situation in many of the members of the Russian Federation and the need to take varied decisions, on the other hand. Considerable progress in solving the problems of minorities have already been made in a number of regions. At the same time, most members of the Federation typically lack any clear legal policy on these matters.

291. The Republic of Sakha (Yakutia) may be specially instanced as one of the regions where an attempt has been made at the legal level to solve the problems of national minorities and indigenous peoples whose numbers are small. The Constitution of the Republic of Sakha (Yakutia) adopted on 4 April 1992 includes, in addition to general provisions on the equal rights of all peoples inhabiting the Republic, a whole set of articles connected with guarantees for the rights of peoples whose numbers are small. They include the right to own and use land and resources, including tribal agricultural land and hunting territories; and protection against encroachments on ethnic individuality, historical and other related places, and religious and other

monuments. The Constitution guarantees the preservation and regeneration of the Republic's indigenous peoples (art. 42), and of language, national cultures and individuality (art. 49).

292. The Constitution of the Republic of Bashkortostan, adopted on 6 January 1994, prohibits use of the rights and freedoms of citizens of the Republic for the inciting of racial, national and religious hatred (art. 18); and all forms of restriction on civil rights on grounds of race, nationality, language or religion (art. 20). It is proclaimed that citizens of the Republic are entitled to decide and specify their nationality and that nobody may be obliged to decide and specify his nationality. Citizens are accorded the right freely to choose the language of communication, to use their native language, and to be taught and brought up in their native language (art. 35). The Republic acknowledges and guarantees equal rights for the preservation and development of the languages of all the national groups inhabiting its territory, and creates possibilities for their free development (art. 36). The ethnic communities inhabiting the Republic are accorded the right to establish their own national cultural associations; the Republic guarantees the preservation and development of the national cultures of the peoples living in its territory (art. 53).

293. Language laws proclaiming the right of national minorities and peoples whose numbers are small to use their native language have been adopted in a number of Republics, e.g. in Khakassia, Buryatia and Tatarstan. A number of the members of the Russian Federation are introducing regulations on the establishment and activity of national territorial entities (e.g. the Act of the Republic of Karelia of 22 November 1991 "Legal Status of the National Regions, and of the National Settlement Councils and Rural Councils in the Republic of Karelia"; the Act of the Buryat SSR of 24 October 1991 "Legal Status of the Evenki Rural (Settlement) Councils of People's Deputies in the Territory of the Buryat SSR"; the Decision of the Presidium of the Kemerovo Oblast Council of People's Deputies of 20 November 1991 "Provisional Regulations on the National Rural Council (Aimak)". Regulations are also being adopted on the organization and activity of such forms of national self-government as nomadic tribal communities (e.g. the Act of 23 December 1992 on the nomadic tribal community of the Northern peoples whose numbers are small; the Statute on the status of tribal pastures in the Khanty-Mansi Autonomous Okrug, adopted at the fifth session of the XXI convocation of the Council of People's Deputies of the Khanty-Mansi Autonomous Okrug on 7 February 1992 and so on).

294. These rules are in line with the international rules on human rights and the rights of national minorities, and they raise the status of citizens in the national sphere to the level of the international standards. At the same time, the existing legislation remains clearly inadequate and needs to be specially developed. Here some of the difficulties are connected with overcoming predominantly economic and technical problems (e.g. implementation of the right to be taught in the native language). The Russian Federation recognizes the need for more effective realization of the international agreements on the human rights of national minorities and will strive to guarantee them through further development of its own legislation.

295. No common concept of a legal policy for defence of the rights and interests of minorities in a Russian context that takes account both of international experience and of the special features of Russia has yet been defined in the Russian Federation. Adoption of the Principles of Legislation of the Russian Federation on Minorities is a protracted process; those principles should provide comprehensive coverage of the whole range of essential guarantees for protection of the rights and interests of minorities in Russia, taken in conjunction with the fundamental human and civil rights, freedoms and obligations. Principles of the legislation of the Russian Federation on the legal status of indigenous peoples whose numbers are small are being drafted and have not yet been adopted. The adoption of this legislation would lead to the establishment of a common level of regulation of relations connected with the status of national minorities and peoples that are small in numbers in all regions of the Russian Federation, which will be a basis for further regional development of these relations.

296. The complex ethnic structure of the population and the specific features of the State structure of Russia oblige us to define what is understood by the concept "national minority". In the approach being developed the reference is, in the first instance, to ethnic communities living in the territory of Russia and having their own State formations outside its limits (Belarusians, Ukrainians, Kazakhs, Kirgizians, Uzbeks and others); second, it is to ethnic communities living in the territory of Russia that do not have their own State formations either in Russia or elsewhere (Gypsies, Assyrians, Kurds and others); third, it is to ethnic communities living outside their own national State and national territorial formations in Russia (Karelians living outside the Republic of Karelia, Mordvinians living outside the Republic of Mordvinia).

297. Concern to safeguard the national rights of minorities is connected with the process of the establishment and strengthening of agreement between the nationalities in Russia, which has to take into account ethnic, economic and regional characteristics and reconcile the interests of ethnic and national groups in the transition from a totalitarian and rigid centralized system of Federal relations to a more asymmetrical framework of such relations. A special place in this process is occupied by the Federal Treaty, under which regulation and protection of the rights of national minorities is made the responsibility of the Federal State bodies, while protection of the rights of national minorities in the member Republics of the Federation is made the joint responsibility of those bodies and the State bodies of the constituent republics. Such an approach is confirmed in the Constitution (arts. 71 and 72). The agreement between the Russian Federation and the Republic of Tatarstan, which established the special status of this Republic in the Federation, leaves regulation and protection of the rights of national minorities in the hands of the Federation, but includes protection of human and civil rights and freedoms among the powers of the State bodies of the Republic of Tatarstan, without making any special reference to the rights of national minorities, although the task of ensuring harmony between the nations and the security of the peoples is mentioned in the Preamble, along with priority for fundamental human and civil rights and freedoms irrespective of nationality, religion, place of residence and other differences. At that level importance attaches to the agreement set out in article III of the

Federal Treaty that members of the Federation possess the whole gamut of State power outside the limits of the powers assigned to the competence of Federal bodies.

298. Harmony between the nations is achieved in Russia in the context of the definition of priorities in national policy, and the formation of the concept of Russian federalism. At that level there is a surviving threat to the Federal principles of the State order from aggressive nationalism opposing the interest of separate national and ethnic groups to those of the multi-national Russian people. In the context of the Ossetinian-Ingush conflict the Russian authorities are working to overcome the trends that enable individuals who stir up discord between the peoples and generate national extremism and tension in the zone where a state of emergency is in force to escape responsibility (see also in relation to arts. 1, 4 and 20 of the Covenant).

299. Arising from the discussion in the Government of Russia on the document "Concepts of National Policy in the Russian Federation" there was no support for an approach leading to the abolition of existing national State formations in Russia and the break-up of the country along national lines. Considerable importance attaches to the point made in the message of the President of the Russian Federation of 24 February 1994 that no one ethnic group may have an exclusive right of control over territory, the institutions of power and resources.

300. The drafting of a multilateral convention on guarantees for the rights of individuals belonging to national or ethnic, linguistic and religious minorities is nearing completion, and negotiations have been commenced on the feasibility of bilateral agreements in this area. A multilateral Agreement on Matters Relating to Restoration of the Rights of Deported Persons, National Minorities and Peoples was signed on 9 October 1992.

301. Pursuant to the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities adopted in 1992 at the forty-eighth session of the United Nations General Assembly, a Declaration on the principles of cooperation between the Russian Federation and the Republic of Hungary on guarantees for the rights of national or ethnic, religious and linguistic minorities was signed on 11 November 1992.